United States Court of Appeals

for the Second Circuit

EXHIBITS

DESIGNATED GENERAL COUNSEL EXHIBITS

VOLUME III

(16f-j)

GENERAL COUNSEL'S EXHIBITS

Volume III

Exhibit	Description
16f.	Transcript of disciplinary trial of Hugh Benson.
16g.	Designated pages from transcript of disciplinary trial of David Levinson.
16h.	Transcript of disciplinary trial of William Roberts.
16i.	Transcript of disciplinary trial of Albert Ruddy.
16j.	Transcript of disciplinary trial of Herman Saunders with attached letter of 1/22/73.

INTRAUNION [illegible] CIPLINARY HEARING

gc 16 F

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
HUGH BENSON.)
)
)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

July 31, 1973

ORIGINAL

REPORTED BY: Willie B. Brown
CERTIFICATE NO.:

BILL CUFF & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
13817 CALVERT STREET
VAN NUYS, CALIFORNIA 91401
873-7410

INTRAUNION DISCIPLINARY HEARINGS

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
HUGH BENSON.)
)

TRANSCRIPT OF PROCEEDINGS taken on behalf of Writers Guild at 8955 Beverly Boulevard, Los Angeles, California, commencing at 2:30 P.M., Tuesday, July 31, 1973, before Willie B. Brown, Notary Public.

BEFORE:

GEORGE SEATON, Chairman
DANNY ARNOLD
JOHN LEE MAHIN
ARNOLD PEYSER
WENDELL MAYES

APPEARANCES:

FOR WRITERS GUILD:

MILTON ORMAN, ESQ.
3242 West Eighth Street
Suite 223
Los Angeles, California 90005

FOR RESPONDENT HUGH BENSON:

LOEB AND LOEB
BY: DAVID G. MILLER, ESQ.
One Wilshire Building
Wilshire Boulevard at Grand Avenue
Los Angeles, California 90017

I N D E X

	Page
Proceedings of Intraunion Disciplinary Hearing	4

WITNESSES:

S. S. SCHWEITZER	
Examination by Mr. Orman	30
Cross-Examination by Mr. Miller	33
AUSTIN KALISH	
Examination by Mr. Orman	40
Cross-Examination by Mr. Miller	43
HUGH BENSON	
Examination by Mr. Miller	56 75
Cross-Examination by Mr. Orman	65

EXHIBITS:

TRIAL COMMITTEE NO.	DESCRIPTION	
1	Notice of Disciplinary hearings	6
1-A	Letter dated 6/12/73	6
2	letter dated 6/14/73	7
3	letter dated 6/22/73	7
4	Letter from Mr. Mendonsa to Mr. Miller	7

GUILD'S EXHIBIT NO.	DESCRIPTION	
1	Mr. Benson's work record	30
1-A	Mr. Benson's work record	30
2	Mr. Benson's credit record	30

RESPONDENT'S EXHIBIT NO.	DESCRIPTION	Page
1	Contract agreement dated 2/20/73	58
2	Letter from MGM to Mr. Benson	61

MR. SEATON: Come to order, please.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Incorporated, versus Hugh Benson, B-e-n-s-o-n.

This matter is being heard before a trial committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Incorporated.

The members of this trial committee are: Chairman, George Seaton, S-e-a-t-o-n.

John Lee Mahin, M-a-h-i-n.

MR. PEYSER: Arnold Peyser, P-e-y-s-e-r.

MR. MAYES: Wendell Mayes, M-a-y-e-s.

MR. SEATON: Now, will the parties state their appearance for the record.

For the Guild.

MR. ORMAN: Milton Orman, O-r-m-a-n, appearing on behalf of the Executive Directors of the Writers Guild.

MR. SEATON: For the respondent.

MR. MILLER: Loeb and Loeb by David G. Miller appearing on behalf of Hugh Benson.

MR. SEATON: Are there any other appearances to be made in this matter?

No other counsel to be represented on the other side?

Let the record show that there is no response.

I have a copy of the charges and a copy of the letter sent by certified mail to the respondent on June the 12th, 1973, with the signed return receipt attached.

I have marked these as Trial Committee's Exhibit No. 1.

Do you have a copy of that, Mr. Miller?

MR. MILLER: Yes, I do.

MR. SEATON: Well, if there is no objection to the receipt in evidence of the Trial Committee Exhibit No. 1, may we put it to the record.

MR. MILLER: One moment. No, I have no objection.

MR. SEATON: Then it shall be placed in the record as Exhibit 1. Also in connection with Exhibit 1, let's mark it 1-A. There is a letter dated June 12, 1973, which was sent by certified mail to Mr. Hugh Benson, Notice of Disciplinary Hearing and Charges.

> "Dear Mr. Benson: Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, West, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.
>
> It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned."

It is signed very truly yours by John A. Mendonsa resident counsel.

Now, there is a receipt with Mr. Benson's name at the left-hand bottom of the page --

MR. MILLER: Excuse me, Mr. Chairman. I may be confused. I thought that was No. 1.

MR. SEATON: Well, I think the Notice of Disciplinary Hearing and Charges and the letter to Mr. Benson should be coupled 1, and I have marked them 1 and 1-A.

MR. MILLER: Which one do you have marked as 1, the letter or the Notice?

MR. SEATON: The Notice and the letter, I have coupled them to 1 and 1-A. Is that agreeable with you, Mr. Miller?

MR. MILLER: Certainly.

MR. SEATON: All right. Being no objection, that will be accepted as exhibit into evidence.

(Whereupon the above mentioned documents were received into evidence.)

MR. SEATON: I have here a marked Trial Committee's Exhibit No. 2 on one page. It is a letter requesting continuance of the hearing dated June 22, 1973, addressed to Mr. John Mendonsa, signed by David Miller.

Now, I understand from Mr. Miller that there was a phone conversation between Mr. Benson and Mr. Mendonsa prior to this letter, but I think you all have a copy of that asking that the hearing --

MR. MILLER: Yes, because of that, Mr. Chairman, I think your characterization of my June 22nd letter is a request for an extension, which is in all due respects incorrect.

MR. SEATON: Why?

MR. MILLER: If you look at Mr. Mendonsa's letter of the 14th, he confirms that Mr. Benson called him or requested the extension. My later letter --

MR. SEATON: I am sorry.

MR. MILLER: -- is merely confirming that it had been rescheduled at Mr. Benson's request.

MR. SEATON: All right. Then I will refer and change the

number. You are right, Mr. Miller. The June 14th letter which you have there, let us mark that Exhibit 2.

Do we all have it?

"At your request the hearing in the above-captioned matter is continued from Friday, June 29, 1973, to Monday, July 16, 1973 at 2:00 P.M. at the Guild's offices."

Let's make that 2, and we will make Mr. Miller's letter 3, which confirms the continuance.

If no objection, we will enter this into the record.

(Whereupon the above mentioned documents were entered into the record.)

MR. SEATON: Then there is another letter which we will call 4 from Mr. Mendonsa to Mr. Miller saying:

"Dear David. . ."

I don't have to read it. Do we have it there? Do all agree that it should be put into the record?

Mr. Miller.

MR. MILLER: No objection.

MR. SEATON: Do you agree it can be entered into the record, Mr. Orman?

MR. ORMAN: Certainly.

MR. SEATON: If there are no objections, all of these exhibits up to Exhibit 4 will be placed into the record.

(Whereupon the above mentioned documents marked as Exhibit 4 by the Chairman and is to be entered into record, also all previous documents marked 1

through 4 will be entered into record at this time.)

MR. SEATON: Now, do the parties wish to make any opening statements?

Mr. Orman.

MR. ORMAN: I will waive opening statement at this time, Mr. Chairman.

MR. SEATON: Mr. Miller.

MR. MILLER: Mr. Chairman, at the outset, I have a number of motions that I would like to make, many of which I feel go to the very heart of these proceedings. They are very extensive in legality and many of which, if seriously considered by the committee and granted would result in dismissing these proceedings at this moment or in the alternative at least continuing them to a date that at which time Mr. Benson's rights under the Constitution and federal statues can be protected.

At the outset, I would like to say that I realize that some or all of you may have heard some or all of these motions before, but I think it is necessary to protect the record on Mr. Benson's behalf to renew these motions here on his record, on his behalf. I will not argue them at great length. I will merely state the basis for the motion, what authority I am relying upon and making a brief statement in its support.

If you wish, I can make them ad seriatim and you can consider them all at the end. If you wish to consider them piecemeal following Mr. Orman's response to them, or whatever your pleasure may be.

MR. SEATON: As you said, Mr. Miller, we have heard these

same motions. If you could do it briefly and if there is no objection, we can hear them all at once.

Mr. Orman, how do you feel?

MR. ORMAN: No objection, Mr. Chairman.

Mr. Chairman, I hope you will then indulge me to make a few responses to protect the Guild's record.

MR. SEATON: Naturally.

Proceed, Mr. Miller.

MR. MILLER: May I inquire, Mr. Chairman, before I begin.

Has any of the other members of the panel ever sat on my proceedings in which representatives of our firm have participated?

MR. SEATON: I think Mr. Peyser has and Mr. Arnold has, and then you may --

MR.MILLER: Then I think these motions may be new matter and I think they are serious and should be seriously considered and as I said, I will be brief, but I will have something to say in support of them nonetheless.

The first motion is to dismiss these proceedings on the grounds that the respondent in this case, Mr. Benson, has not been properly served with copies of charges upon which these proceedings are based. And I rely for my motion on both your Constitution and By-Laws and on the federal law.

First, as to your Constitution and By-Laws, Article X, Section 5 which is the disciplinary section says:

> ". . . that after the trial committee has been selected, a copy of the charges shall be served upon the member against whom the

charge has been made accompanied by Notice giving the date and place of hearing . . ."

We have been served with a letter and what purports to be a summary of the charges signed by John Mendonsa, the resident counsel. Neither Mr. Benson or I received or have been served with the actual charges. Now, you may inquire, well, why should this technicality be observed if we have been served with this Notice. There is a very good reason for it. The charges are supposed to be preferred by members of the Guild. The charges themselves must of necessity be, must be specific than those. For example, on such and such a date, I saw Mr. Benson cross a picket line at Metro Goldwyn Mayer, signed such and such a member.

It gives Mr. Benson, the right, one, to specifically know the nature of the charges and as I will argue later, these charges are not specific. And, too, the right of confrontation, to know in advance, to know who the witness is going to be against him and prepare his defense. Instead, we have a somewhat cloaked in the secrecy of Grand Jury proceedings or otherwise nothing more than what purports to be a summary of the charges and I am not sure it is that, signed by the Guild's resident counsel.

Again, in direct contradiction to what is required by your Constitution, i.e., a copy of the charges, the right to know which members will be testifying against him and what the specific nature of the offense charged is. This also comports with Section 411(a)5 of the Labor Management Reporting and the Disclosure Act and Landrum Griffin Act which requires that

a Union member accused of violating Union rules be afforded due process in the three specific elements of due process under that section are one, that he be served by written specific charges. Two, that he have reasonable time to prepare his defense and three, that he be afforded a full and fair hearing.

I am concerned obviously with No. 1 that he be served with written specific charges. He is entitled to know his specific charges and to confront the witnesses that will be arrayed against him, that comports also with the requirement that he have a reasonable time to prepare his defense. If served with specific charges, he can reasonably prepare his defense. We do not allege that he was not afforded that time since Mr. Benson did request one continuance that was granted, another continuance was granted at the request of the Guild, but it only becomes reasonable if he knows what the charges are.

For that reason, we would move that until such time as he is afforded the opportunity to see and be served with the specific charges that hearing, these hearings, should be dismissed. That is Motion No. 1.

Motion No. 2 is a similar motion and it is a motion to dismiss these proceedings on the grounds that Mr. Benson's status as a member is as an associate member, that he was not afforded a full and fair opportunity to vote on the rules under which he is now being disciplined as an associate member.

For the full tenure of his membership, he has not had an opportunity to vote. He does not enjoy the full benefits of unionism, and he had no opportunity to vote on these strike

rules which now have been invoked to deprive people of membership in the Guild, one and two, two substantially define themselves in substantial amounts up to $50,000 in some instances.

Certainly, all of the elements of due process require that if he is a member of this body, that he have some voice in the rules and regulations under which he is purported to be deprived of this substantial amount of property and his Union membership. That is Motion No. 2.

Motion No. 3 is to dismiss the charges in that they are uncertain and that they are vague.

The Guild's Constitution, I believe, Article X, Subsection B, Section 1 requires that the charge shall specify as succinctly and explicitly as possible the nature of the offense and the date and place of the occurrence.

Now, let's look at a couple of aspects of the charges. One, is that Mr. Benson is charged with having violated Guild's Strike No. 1. Guild Strike Rule No. 1 reads:

> "Any act or conduct which is precendential to the welfare of the Guild is subject to disciplinary, conduct tending to defeat a strike or any way weakening its effectiveness to say conduct prejudicial to the welfare of the Guild."

It is our contention that is such a vague and ambiguous provision as to put no one on notice as to say what conduct, acts or border offenses would violate such a standard. I think it is unconstitutional and overbroad. It is vague. It is not the specific and succinct charge that is required by your constitution nor the specificity required under Lands

and Griffin.

Two, he is charged with having during the month of April rendered services for Metro Goldwyn Mayer, Inc., and it does say in more specifically on or about April 4, 1973, "With respect to the allegation concerning April 4, 1973." That is specific as possible. However, to the extent that there will be any attempt to introduce evidence concerning activity on April 16, April 17, April 18, and to the extent that there is no depiction of what the services are and what services he is accused to have performed, we feel that this is an overbroad, overvague charge. It does not give us an opportunity to prepare, to go over with Mr. Benson where he may have been on a particular date, what he was doing and as we have all seen recently, it is somewhat difficult to recall where, where you were at a particular date, time and place.

For those reasons, we urge that these charges be dismissed or in the alternative that a continuance be granted until such time as the Guild can serve the member with printed and specific charges giving him a reasonable opportunity to defend himself under the principles of due process. That is Motion No. 3 and in the alternative is the motion to continue so that the charges can be clarified.

We think it is very germane to these hearings that the Guild allege the type of services it considers to be violative of its strike rule if rendered for a company for which the Guild is on a strike and to give us the opportunity to defend against those allegations.

Motions 3 and 4 are one to dismiss the charges or

in the alternative to clarify them so that we may have an appropriate opportunity to defend them.

The next motion goes to the procedures under which Mr. Benson is being tried and, particularly, to what we consider to be an inappropriate delegation of authority -- excuse me, may I get a glass of water.

MR. SEATON: Yes, right over there, get a cup and the water is back at the cooler.

(A short recess.)

MR. SEATON: Please go ahead.

MR. MILLER: Article X, Section 6 delegates to the executive director of the Guild the obligation to present disciplinary charges.

Specifically, it reads:

> "The executive director shall present to the committee the charges and any evidence in with respect thereto."

In this instance, the executive director, Michael H. Franklin, is not present. Neither is the resident counsel of the Guild, Mr. Mendonsa. Instead the Guild has retained, presumably at the Guild's expense, a lawyer, an outside lawyer, to prosecute its own member. I presume Mr. Orman is charging a fee for his presence here, and we feel that that constitutionally Mr. Benson and any member is entitled to be confronted by the officer of his guild to whom has been delegated by the Constitution the authority to present these charges.

The Guild's Constitution and By-Laws is the document from which it derives its authority to act and it sets the

metes and bounds within which it can act.

Simply to ignore that document strips any labor organization of a color of authority or law under which it acts. To prosecute one of its members by the use, in all deference to Mr. Orman, of outside counsel, takes outside of the Guild the details of what transpired here and puts the burden much more so on a prosecutor, someone who is retained to prosecute, and I presume to procure conviction, in a setting which should be much less of an adversary setting and simply is without any authority under the Constitution. That is the substance of our next motion. That is the subject of that motion, excuse me. That is the end of that motion.

The next motion and perhaps this should wait until some evidence, but I think the evidence will verify it and I intend if you do not act favorably on any of these motions to renew them at the end of the proceeding.

The evidence will show that Mr. Benson while he had some early writing credits, he is not a writer. He has never done any writing and his current services are as a producer and most currently as an executive producer for ALL on the air programming for MGM Television. He is a management executive. It is our contention that the Guild has no jurisdiction over supervisory or managerial or executive employees.

Mr. Benson is a management representative. He is relied upon by MGM to perform his functions in the interests of management.

I recall during the recent negotiations and prior to that time, both publically and privately that Guild representatives

claim that they were engaged in any effort whatsoever to assert jurisdiction over or to represent producers or executives. If that is the case, then I think this Board has no choice by the instant case to dismiss the proceedings against Mr. Benson because I represent to you now and I will represent to you he is a producer; he is an executive; he is not a writer.

Furthermore, it is our contention that not only does this go to the jurisdiction of this Committee, but it also goes to the very legality of these proceedings. Many of you may be aware that we have alleged that these entire proceedings, the threats that preceded them and the discipline which has followed them are violative of the Labor Management Relations Act as alleged and more specifically Section 8b, 1b as such, these proceedings are ultimately held to be unlawful.

The Board will find itself, the Trial Committee will find the act outside of the color of the law. We urge you to consider seriously that these are unlawful proceedings and they are illegal and that any privilege that you feel attached to them at the present time, may subsequently be removed and such time as they are held by the National Labor Relations Board to be unlawful.

You all know the present state of the Labor Board Law is that these proceedings and the discipline of supervisors is unlawful. The District Court of Columbia, the Circuit Court Appeals for the District Court of Columbia, has recently held that in certain instances a Union may discipline supervisors. In that instance, a supervisor crossed the picket line to do bargaining unit work. I will suggest to you two bases of which

this Committee and this Guild should not take too much comfort from that case. One, which you can dismiss readily out of hand is my own opinion that it will be reversed by the Supreme Court because I think it misreads the legislative history of the act. An employer is entitled to the loyalty of a supervisor, particularly, during the economic battle of a strike. Second, that case leaves a very nice nitch for Mr. Benson and for other members of the Guild who have been involved in these hearings. The case does not deal with supervisors who cross the picket lines who do supervisory work. In fact, I think the Union, No. 1, in one of those cases conceded that it would be unlawful work for their member who crosses the picket line to do supervisory work. Two, it says particularly so if he was compelled to do so by his employer, and we will show you that we have sent all of these people letters to require them to work to perform their non-writing functions, their supervisory function. So I think you will find that case leaves a very nice niche. Third of all, there has been a very nice Seventh Circuit decision which in a footnote acknowledges the D.C. Circuit Court decision that goes the other way. So we now have a conflict in the Circuit and I think the case will ultimately be decided by the Supreme Court, but I want you to recognize that even if the D.C. Circuit Court reasoning is adopted, it is still a very broad niche that we feel that each one of these gentlemen fall into.

For those reasons because these proceedings are as we contend violative of the federal law, we urge that these charges be dismissed.

The next motion as an alternative to this motion, as an alternative to the prior motions, is based on the fact that there is currently pending involving the very activities that we are engaged in a hearing before an administrative law judge of the National Labor Relations Board. Ultimately, the Labor Board will reach a decision. The first phase of the hearings were concluded. We have filed new charges and a new complaint has been issued based on the imposition, the actual imposition of discipline, and another trial date is set for October 9th.

Ultimately, the Labor Board will determine the legality of these proceedings, and we feel that that determination is significant to your proceedings here and that in the alternative so as not to put your member to the time and the embarrassment and the pressure of these proceedings, that you should continue these proceedings pending a determination by the National Labor Relations Board. That is the substance of that motion.

The next motion is related to what we consider to be a violation of law and merely the fact that by seeking to discipline a producer, the Guild exceeds its very jurisdiction. It does not represent executives. It does not represent producers. It is an exclusive bargaining representative of writers in the motion picture industry. Mr. Benson is not a writer, so to that extent, the Guild does not represent him, seeks to discipline exceeds the Guild's jurisdiction.

If you exceed your jurisdiction, you, of course, have no authority to act and based on that, we urge that these

charges should be dismissed.

My final point that I would like to make now, I think the Committee for its indulgence, is under the Guild's Constitution. I believe it is Article X, Section 4. I would like to note:

> "That the composition of this trial panel should be five current members in good standing, none of whom is interested in the proceedings other than the Guild members. . ."

This is supposed to be the Trial Committee. I would like to note that during negotiations and during the time leading up to negotiations and the strike and during most of the part of the strike, Mr. Arnold was a member of the Guild's council. I cannot believe that he is so -- I must believe that as a member of the council, that he was so closely involved with the formulation of strategy and policy leading up to the negotiations, the ultimate termination of those negotiations, the strike, strategy, before and after strike, that for Mr. Arnold to dispassionately judge the conduct of a fellow member during the strike would be difficult if not impossible.

For that reason, I would request that Mr. Arnold disqualify himself from sitting on this panel. That is the end of that motion and the conclusion of all of the preliminary motions that I have so stated.

MR. SEATON: Thank you, Mr. Miller.

Mr. Orman, do you wish to respond?

MR. ORMAN: Yes. Thank you, Mr. Chairman. I hope the members of the Committee will indulge while I go -- take the

Guild's position and answer some of these motions.

With regard to Motion No. 1, the counsel said that it was not -- the charges were not according to the Constitution of the Guild. Counsel said that charges have to be filed by a member of the Guild. This is not correct. The Guild Constitution provides in Article X, Section -- I guess it would be called Section B and paragraph B, Section 1. It very specifically states an alternative can either be a member of the Guild or the Board itself can file charges. In this case, it was the Board itself who filed, which filed the charges pursuant to the Guild's Constitution. Along with that, counsel said that they were -- Mr. Benson was not served with copies of the charges. Well, I might point out when he got to Motion No. 3, he contradicted himself. He does admit that Mr. Benson was served with copies of the charges based in Motion No. 3. He says they were vague and uncertain. Well, I don't know, referring back to Motion No. 1, I don't know how you can be more specific than what these charges show. They say in Paragraph II, it says, "Notice is given that you were charged with violation of Guild Strike Order, and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike April 20, 1973, copies of which are attached hereto."

Mr. Benson got the specific charges. Certainly, I don't want to read into the record Sections 1, 12 and 13, but they are quite specific, and he knows exactly what he is charged with.

In fact, Paragraph III of this Notice of Disciplinary Hearing charges goes on to amplify what it says in Paragraph II

and sets forth in more detail. So I don't know how I can be more specific than what the charges are.

Along with that, counsel said that Mr. Benson does not know in advance who his witnesses are. Not only is this a Union hearing, it is not an administrative hearing, but I point out the obvious fact even if this were in a court of law, there is no rule in a court of law, perhaps with discovery motions being made, there is no rule in the court of law where you have to say who your witnesses are. There is nothing in the Constitution or any court that requires it. I submit that this Trial Committee does not have to have a more stringent standard for witnesses than we have in a court of law.

Motion No. 2 was that Mr. Benson is an associate member and therefore wasn't permitted to vote for the strike. Well, I must -- I hope that you will indulge with me while I give the same hypothetical example that I gave the last time I was here.

Assume that Mr. Benson or another writer had committed another violation of the Guild's Constitution rules. Pursuant to the Guild Constitution, he then would be disciplined and therefore one of the disciplines would be he could not vote. So, in other words, if Mr. Benson or another writer previously broke another Guild's rule, comes to strike time and he is supposed to vote, he would not be permitted to vote. In other words, two wrongs does not make a right, plus, obviously, the more general aspect of this, throughout all history and in our country, also especially in our country, people have been required to obey rules and regulations in which they have

not been permitted to vote. Certainly, people under the age of 18 are obeying rules and regulations and cannot vote anyplace in the United States. There is nothing unusual about this. Somebody moving to a new district must have a certain amount of time in that district before he can be able to vote. Yet a law can be passed at an election which can vitally affect that. There is nothing unusual about that nor is this a denial of due process.

No. 3 is again which I brought up before, vague and uncertain, and there is nothing vague and uncertain about it, and I don't want to go into it any more except that counsel did say that charge No. 1 is too isolated because it is so broad. He said it is not a part of due process because it is so broad.

Well, the Guild will concede that the only charge was the charge that Mr. Benson had violated merely Section 1 of the rules, we would go along with that and say that is not sufficient. You cannot take it out of context. He is charged with Section 1, 12 and 13. 12 and 13 are the specific charges; 1 is the more general broad one, and all three must be read together.

Counsel did say something about we cannot charge Mr. Benson with violating the things that happened on April 16th, 17th and 18th.

If I understand correctly, I agree. We are not charging Mr. Benson with anything happening April 16, 17 and 18. We are only charging him with one date, April 4th, 1973.

The Board should clarify the charges which is again

a substantial repetition and I don't want to go into a mere repetition of it.

No. 5 is the fact that supposedly the executive director has presently presented the case for the Trial Committee. Well, one of the most common elements in all law is proper delegation of duties. All constitutions say a president or government or this or that has to do something or another and everybody recognizes the fact that it is literally impossible for this particular person to do it and he must delegate his authority. What if the executive director were dead or what if he was grievously ill or what if he was on vacation or he had to be someplace else, well, certainly, the Guild can continue to function. It does not grind to a halt because of some act of God and certainly counsel could concede, therefore, the Guild could operate through a duly delegated and authorized representative even though I have been employed as an outside counsel, I have not been employed to procure conviction nor is the Trial Committee here to procure conviction. This Trial Committee is very much interested in just getting the truth and the facts. In fact, as the procedure is set up, if more than one person disputes the finding, then the Trial Committee must find in favor of Mr. Benson and anybody charged to the contrary.

The procedure of the Guild is to be as much as possible to give an accused person a chance to present his position.

No. 6 which also will be repeated, another motion is counsel alleges that Mr. Benson is not a writer period quote

unquote.

This is begging the question. The whole issue here is whether Mr. Benson performed writing services as could be understood pursuant to the Guild's rules. Definitely, we have had no evidence yet nor do we know what is writing services. Among the things this Trial Committee will take into consideration is its own expertise on what is writing service and what he knows about it. A very hypothetical example would be if Mr. Benson when he went to MGM that day if he picked up a script and he read that script and he exercised I don't want this scene in; I want so -- so it has to be taken out. If he exercised taking out or somebody misunderstood what he was doing. The director gave his instructions I want to take this out, put in this dialog change. I submit that this is certainly performing writing services in meeting to the strike rule and this is why the strike rule of Sections 12 and 13 were put in to prohibit, to prevent such situations from arising.

No. 7 motion, No. 7 the Guild counsel talked in terms of this is a potential violation of NLRB Section 8b, 1b et cetera. Therefore, no Trial Committee should put itself in position, perhaps some future date having measures brought against it for some called unlawful proceeding. Well, under counsel's interpretation, there is no committee, no organization, no court, no administrative body that could act until the Supreme Court of the United States has specifically spoken on the particular subject. Certainly, the presumption is that all laws and rules and regulations and constitutions and et cetera are lawful until such time as they have been said to be

otherwise by a higher authority and certainly this Trial Committee can function until such time as the Supreme Court of the United States has told it no.

Motion No. 8 is an alternative postponement for the same reason. I don't think I have to go into that.

Motion No. 9 is again a repetition. It said that this Trial Committee is exceeding the jurisdiction of the Guild because it is now in the process of disciplining a producer. And again counsel is begging the question. The point is was Mr. Benson performing as a producer or was he performing as a writer, and it is very possible the presumption based upon the strike rule says that he was performing services within the meaning of the Guild's strike rule. The meaning which a writer could be with potentiality.

No. 10 which was his last motion and I am glad it is also my last answer to his last motion, and he is saying that this Trial Committee cannot sit because it is in violation of Guild's Constitution which says that an interested member may not sit and counsel simply refers to Mr. Arnold saying that he was a member of the Guild's council at the time and plaintiff has a specific interest. Well, obviously, he is distorting the meaning of interested. The normal meaning which everybody would understand would be if somebody had a very specific financial, economic or perhaps a personal creative interest in this matter, which certainly no member of this Trial Committee has since their interest is only an interest as of a member of the Guild. Of course, this motion has no validity on that basis. That concludes my response, Mr. Chairman.

MR. MILLER: Mr. Chairman, may I say just a few words in response. I have some response to a couple of his responses.

MR. SEATON: Could we take this up in argument or do you want to fortify your motions?

MR. MILLER: No, I just wish to clarify a few things that Mr. Orman said. I will not deal with all of them. It will not take no more than two or three minutes.

MR. SEATON: Please.

MR. MILLER: On Motion No. 1, my objections do not go to a defect in who filed the charges, whether it was by the Board or a Guild member. It is simply that we are entitled to be served with the charges that were filed.

On Motion No. -- which I guess is No. 5 -- under proper delegation of duty, I must clarify something that I oppose the delegation of the executive director to outside counsel who was here to procure conviction. I did not at any time say as counsel characterizes it, the Trial Committee is here to procure conviction and I resent the implication that I in any way want to impune the integrity of this Committee or suggest that it had made decisions in advance of hearing the evidence.

I don't believe, I think, the record will show I did not at all refer to the Trial Committee in that portion of my motion.

Counsel takes an interesting term on my motion where I say the Guild is exceeding its jurisdiction in disciplining somebody for performing services. He said that the issue is whether he performed writing services pursuant to WGA rules.

In prior hearings, the Guild counsel has taken the position that any service would suffice. He now alleges writing services and he gives specific examples and it goes directly to this jurisdiction over producers. He said he told the director to take out a scene; that is writing services. I am sure you all are familiar with the A through H exclusions from the definition of writing services in the Collective Bargaining Agreement which was in effect during the course of the strike with the exception of the Guild shop and other provisions.

This contract terms and conditions remain in effect. Exclusion No. H:

> "Instructions, directions or suggestions whether oral or written made to writer regarding story or teleplay. . ."

If now the A through H exclusions are going to be deemed writing services, counsel argues that they will be, then certainly the Guild is seeking to represent producers, executives, nonwriters.

Lastly, I urge you seriously to consider my motions for any alternative upon hearing the evidence seriously, to reconsider if you are not inclined to dismiss at this time. They are made in order to due process to your member, to the inequities of what was an unfortunate strike situation and with an eye what will be a lengthy, costly situation which will not only limit today's hearing, but from all of the hearings that have occurred in the past out of which discipline results.

MR. ORMAN: Mr. Chairman, may I reply very briefly to

counsel?

MR. SEATON: Mr. Orman.

MR. ORMAN: In regard to what the definition of a writer is and exclusions in this Collective Bargaining Agreement is not necessarily controlling as to what his writing services is. What is a writer's performance of this strike, that is, a Collective Bargaining Agreement provided for compensation for certain things and this Trial Committee is not bound by what is in that Collective Bargaining Agreement.

Two, in my example, I was not necessarily limiting this power of this Committee to discipline Mr. Benson or any other person, but solely to quote writers' services. I gave as an example of the potential of what could be a violation of the Guild's strike rules 12 and 13 when I gave the examples of telling a director I want this scene taken out or this scene put in. This is an example of the hazard involved, but I am not limiting the power of this Committee to impose jurisdiction, to impose discipline over a writer merely because he has performed a "service." This is just one test.

MR. SEATON: I think we will take a five-minute recess, and we should return.

(Whereupon a short recess was held.)

MR. SEATON: Mr. Miller, it is the unanimous decision of the Committee that your motions to dismiss are denied. We will continue with arguments, examinations of witnesses, cross-examinations and further arguments that you want, but not on the motions.

Mr. Orman, will you present the Guild's case, please.

MR. ORMAN: Yes. Just for the record, I would like to have submitted into evidence by stipulation of opposing counsel two Guild's exhibitsas Guild's Exhibit No. 1 and 1-A, Mr. Benson's work record which is made of two cards and both sides of the cards.

Is there any objection, Counsel?

MR. MILLER: I so stipulate. No objection.

MR. ORMAN: And as Guild's Exhibit No. 2, Mr. Benson's credit record which is a one-page card.

MR. MILLER: No objection as to foundation. We have some reservations as to the accuracy of that record.

MR. SEATON: Which record are you speaking of?

MR. MILLER: The credit record. With respect to the notation of the credit for Black Sand, there is no indication that Mr. Benson received story credit in connection with someone else. It is his recollection that someone else, as in the other, with the other credits, would have been entitled to story credit.

MR. SEATON: May I ask, Mr. Miller, are you referring to -- oh, I see.

MR. MILLER: And the same would apply to According To Our Files.

MR. ARNOLD: Mr. Miller, are you saying that Mr. Benson says that he does not recall receiving a sole screen credit on the screen; is that the idea? Is that what you are saying?

MR. MILLER: No, what I am saying is that -- and it may be that is the way it appears on the screen -- Mr. Benson's recollection and testimony will be that all stories were in collaboration with another writer.

MR. SEATON: I see. So according to our files it should have a slash W. Also Black Sands?

MR. MILLER: Yes.

MR. SEATON: All right. May we proceed, Mr. Orman?

That is duly noted, Mr. Miller.

MR. MILLER: That also will be the subject of some examination.

MR. SEATON: Surely.

MR. MILLER: That is simply my reservations. I have no objection to the admission of this into evidence. I just wanted you to know that I was not stipulating to the correctness of it.

MR. SEATON: Thank you, sir.

Mr. Orman.

MR. ORMAN: My first witness is Mr. Schweitzer.

S. S. SCHWEITZER

called as a witness on behalf of the Writers Guild, testified as follows:

MR. SEATON: Will you state your name for the record, please.

THE WITNESS: S. S. Schweitzer, S-c-h-w-e-i-t-z-e-r.

EXAMINATION

BY MR. ORMAN:

Q Give us your first name.

A Samuel.

Q Mr. Schweitzer, are you a member of the Writers Guild?

A I am.

Q Tell us how long you have been a member of the Writers Guild.

A I have been a member of Writers Guild of America, West, Incorporated about 12 years.

Q During the recent strike, were you on any committee of the Writers Guild?

A I was on the investigating committee.

Q Could you tell us briefly some of the duties of the investigating committee?

A To investigate violations of the strike rules by members.

Q Referring back to April 4th of this year, did you have an occasion to call the respondent, Mr. Hugh Benson?

A I did.

Q At the time that you called him, did you know him personally?

A Yes.

Q Could you tell us how you knew him?

A We toiled in the same vineyard.

Q Do you want to be a little more specific than that?

A We worked together at Cinema Center.

Q Did you recognize his voice at that time? Do you think you were able to recognize his voice over the telephone?

A Yes.

Q Did you call Mr. Benson on April 4th of this year?

A Yes, I did.

Q And what time did you call him?

A About shortly after lunch, about 2:15.

Q Where -- at what studio was he when you called him?

A At MGM.

Q Could you tell us why you called him? What was the occasion of your calling?

A We seen something in the trades that he was producing a 90-minute movie of the week for ABC at Metro, and so we called to check, to make sure, he wasn't crossing our picket lines.

Q When you say "we," was there anybody else listening in on the call?

A When I say "we," I am speaking on behalf of the Investigating Committee and there were other people in the room. Mr. Taylor was right next to me when I called him.

Q All right. When you called Mr. Benson on April 4, what did you say to him and what did he say to you to the best of your recollection?

A I greeted him and he greeted me, I think, he knew my voice as well as I knew his and I pointed out to him that we didn't think he should be crossing our picket line and rendering services to the studio.

He informed me that he was honoring the contract as a producer and did not -- and was not going to do any writing.

I tried to present our position, and he repeated again that he was only honoring his contract as a producer and did not intend to do any writing. I asked him to check it out with Mike Franklin or one of the other lawyers here at the

Guild and then I wished him luck and that was all.

Q When you asked him to check it out with Mike Franklin, what was his response, if anything?

A I think he repeated that he was honoring his contract as a producer and didn't intend to do any writing.

Q Did he refuse -- did he tell you that he was not going to check it out with Mike Franklin or anybody else at the Guild?

A Yes, I think so.

Q Could you tell us what was -- did he tell you what specific series he was working on at that time?

A It was something called Shirts and Skin which was a 90-minute movie of the week for the American Broadcasting Company.

MR. ORMAN: I have no further questions of this witness.

MR. SEATON: Mr. Miller, do you wish to cross-examine this witness?

MR. MILLER: Yes.

CROSS-EXAMINATION

BY MR. MILLER:

Q Mr. Schweitzer, you testified that you called him approximately 2:15 in the afternoon.

Who answered the phone when you called?

A The secretary, I believe.

Q The secretary answered the phone?

A Uh-huh.

Q Was Mr. Benson -- did she turn you over immediately

to Mr. Benson or did she have to call you back or what?

A I believe she turned me over to Mr. Benson.

Q Were you on the picket line at MGM?

A No, I was not.

Q Did you inspect to see whether there were pickets on MGM on April 4th?

A I did not inspect to see whether there were pickets on MGM on April 4th for this purpose.

Q I did not ask you for the purpose.

A I didn't inspect. I did ascertain that there were pickets at MGM.

Q How did you ascertain that?

A Well, we ascertained that because if there hadn't been pickets, we would have other disciplinary cases.

Q Do you have any other written notes that would refresh your recollection of this conversation that you have referred to?

A Yes, I have. I prepared a report immediately thereafter and I have had access to that report since that time.

Q May I see that report?

MR. ORMAN: Well, I'm perfectly willing --

MR. MILLER: I know that in previous proceedings, counsel has been willing to show us a copy of that report.

MR. ORMAN: I'm about to say that I am perfectly willing to give you a copy of this report at this time without conceding that you have a right to such copy, and without conceding that we necessarily have to work or have to furnish you a copy at some future proceeding with some other writers with that

stipulation.

MR. SEATON: Is that /the report?

MR. ORMAN: Yes.

MR. MILLER: Mr. Chairman, may I have a minute to view this report?

MR. SEATON: Surely.

While you are studying that, Mr. Miller, may I ask a question?

Were you at the strike headquarters?

THE WITNESS: Yes, sir.

MR. SEATON: Do you know whether Mr. Benson was ever asked to picket?

THE WITNESS: I don't know that.

MR. SEATON: Do you have in your records, Mr. Orman?

MR. ORMAN: No, Mr. Chairman, I do not have that in my records at all.

MR. SEATON: Because usually there is a card of every Guild member who is asked to picket, a blue card.

MR. ORMAN: I do not have any information with respect to that because I remember you raised that question at the previous hearing. It would have struck a bell if there had been anything in my file.

MR. MILLER: May the record show that I am showing a copy of this report to Mr. Schweitzer and to counsel, and I want to ask him a question or two on it.

Q Is that a complete report on that?

A Yes.

Q Did you file that on or about April 4th, 1973?

A I did.

MR. SEATON: Before you proceed, could the Comittee see that?

MR. MILLER: Certainly.

MR. SEATON: We have not seen this.

MR. MILLER: Let the record show that I am handing the chairman the report.

MR. SEATON: Shall I read this?

MR. PEYSER: Sure.

MR. SEATON: Here is the report.

"I spoke to Mr. Benson in his office at MGM. I greeted him and he greeted me after knowing me and my voice. I informed him that he should not be crossing the picket lines and performing good and valuable service for the struck facility of MGM. He advised me that he was honoring his contract as a producer of the 90-minute movie for television Shirts and Skin and was not writing.

I asked him to check it out with Mr. Franklin and/or one of the other attorneys. He refused. I wished him luck. Austin Kalish was in the room with me listening on the extension."

There is nothing on the other side.

MR. MILLER: Is that the full and complete report?

MR. ORMAN: I believe so.

THE WITNESS: A continuance is just a mimeograph on the bottom there.

MR. MILLER: Thank you.

MR. SEATON: Thank you, Counsel.

Q BY MR. MILLER: Mr. Schweitzer, sir, didn't I hear you testify that there was nobody listening in, that somebody may have been in the room with you?

A Mr. Kalish was listening in.

Q Oh, is that what you testified to?

I thought you specifically said that nobody was listening in, but that other people were in the room.

A No, I did not specifically say that nobody was listening in.

MR. SEATON: I think it is. It is the chairman's recollection that is what you did say that somebody else was in the room. I don't think you said somebody else was listening in.

MR. MAHIN: The first time, he did not say --

MR. PEYSER: I agree with Mr. Seaton.

THE WITNESS: I am sorry, I did not hear what you said.

MR. SEATON: You said that somebody was in the room, but you did not say that someone was listening.

THE WITNESS: No, I didn't. I did not say no one was listening.

MR. SEATON: No, but I think that was what Mr. Miller was getting at.

THE WITNESS: No, I understood Mr. Miller's question that I said no one was listening. I don't remember that.

MR. ORMAN: My memory disagrees with everybody. I thought I had asked him if somebody was listening because I knew somebody was listening and I thought he answered that someone was

listening.

THE WITNESS: I did answer as to Mr. Kalish.

MR. MILLER: The record will reflect what occurred.

THE WITNESS: Yes.

MR. MILLER: Although I do wish Mr. Schweitzer and the Committee to recognize that I am not trying to pull Perry Mason tricks out of the bag.

My recollection was that he made a statement that is pretty specific that no one was listening in, but that somebody was in the room and that's the reason for the question.

Would the record show that I am handing this statement back to counsel.

MR. SEATON: Shall that be marked as an exhibit, Mr. Orman?

MR. ORMAN: No, Mr. Chairman, I prefer to keep that.

MR. SEATON: Do you wish it to be entered as an exhibit, Mr. Miller?

It has been read and recorded.

MR. MILLER: It has been read in the record by the chairman. I think that will suffice.

MR. SEATON: Thank you, sir. Will you proceed, Mr. Miller.

MR. MILLER: Yes, I will.

I have no further questions of this witness.

MR. SEATON: Is there a redirect?

MR. ORMAN: None, Mr. Chairman.

MR. SEATON: In that case, no re-cross.

Would any member of the Committee like to make a question?

MR. ARNOLD: First, I want to say that I appreciate your

feelings by my being on the panel. I just want to insert into the record, Mr. Miller, that in two previous occasions because I was on the council at a time when a particular case was discussed and the recommendations, as you know, the council wanted to go to trial, that I did disqualify myself on two previous hearings, but I had no previous discussions with or in connection with this particular case which is why I am still here. I just wanted you to understand my reasoning.

MR. MILLER: I was hoping that you would make some statement for the record. I accept your presentation.

MR. SEATON: Any other member that would like to ask a question of the witness?

MR. ARNOLD: I do have a question.

MR. SEATON: Yes, go ahead, Mr. Arnold.

MR. ARNOLD: Shirts and Skin, the thing that you were doing, was this a movie of the week or pilot?

MR. BENSON: Movie of the week.

MR. MILLER: Mr. Chairman, Mr. Benson will be called as a witness. That is the reason he is here and with all respects to the Committee, I would prefer that he would be taken in the ordinary fashion.

MR. ARNOLD: I beg your pardon. I am terribly sorry.

THE WITNESS: I just want to be sure that you just know that he was there that one time on that date. That is the only time I called him, yes.

MR. SEATON: Would the respondent like to ask any questions of the witness?

MR. BENSON: I do not.

MR. SEATON: The witness is excused.

THE WITNESS: Thank you.

MR. SEATON: Mr. Orman, will you proceed.

MR. ORMAN: Yes. My second witness is Mr. Kalish.

AUSTIN KALISH

called as a witness on behalf of the Writers Guild, testified as follows:

MR. SEATON: Mr. Kalish, will you state your full name for the record, please.

THE WITNESS: Mr. Austin Kalish, K-a-l-i-s-h.

EXAMINATION

BY MR. ORMAN:

Q Mr. Kalish, are you a member of the Writers Guild?

A Yes.

Q Will you tell us how long you have been a member of the Writers Guild?

A About 15 years.

Q During the recent strike, did you have any particular duties?

A I had a kind of -- besides carrying picket signs, I also acted as a liaison between the strike office and the Guild and the line bringing in good words from the Guild to what was happening during the strike.

Q Were you on the Investigating Committee?

A No, I was not.

Q Did you happen to be in the office of the Investigating Committee on April 4th, 1973?

A Yes, I was.

Q Could you tell us why you were in the office on that day?

A As I said, I carried messages from the office management of the Guild to the line, carrying any information as to what was happening, both good and bad.

MR. SEATON: Austin, could you speak up a little bit?

THE WITNESS: Yes, all right. I have a loud voice.

I carried messages and information from the Guild to the people on the line having to do with the procedures and what was happening as far as the strike was concerned.

Q BY MR. ORMAN: Were you there when Mr. Schweitzer telephoned Mr. Benson?

A Yes, I was.

Q And you listened in on an extension during that phone conversation?

A Yes, I did.

Q Was this at the direction of anybody?

A Mr. Schweitzer asked me to listen in on the extension and I did.

Q At that time, did you know Mr. Benson in terms as to recognizing his voice?

A I worked for Mr. Benson probably ten years ago and we have seen each other on quite a bit, distance in between us, social functions and occasions.

Q So when you heard somebody say, what -- did you hear

someone say he was Mr. Benson?

A I heard him say -- no, I did not hear he was Mr. Benson.

Q But you recognized the telephone call was being made to Mr. Benson and you knew that?

A I recognized Mr. Benson. I would say that I recognized his voice.

Q All right. Could you tell us what Mr. Schweitzer said to Mr. Benson and what Mr. Benson said, if anything?

A They greeted each other quite friendly and then Mr. Schweitzer asked why he was working at MGM and it was a surprize that he was there and Mr. Benson said that he was there not performing any duties pertaining to writing, but only pertaining to his position as a producer.

Q Did he indicate what particular position as a producer he was performing at that time?

A No, only that he was performing producer functions.

Q Did Mr. Schweitzer say anything to him in response to that statement of Mr. Benson's?

A (No audible response.)

Q Did he make any reference to contacting the Guild or anything of that sort?

A He mentioned about contacting Mr. Franklin at the Guild.

Q What did Mr. Benson say in reply to that, if anything?

A I did not hear a reply to that question. I just heard Mr. Benson reiterate his position that he was only at MGM performing his duties as a producer according to his contract.

Q Now, was that the substance of the conversation?

A Yes.

MR. ORMAN: I have no further questions of this gentleman.

MR. SEATON: Mr. Miller, would you like to cross-examine?

CROSS-EXAMINATION

BY MR. MILLER:

Q Did you see the telephone number that Mr. Schweitzer dialed?

A No, I did not.

Q Did you hear the operator pick it up and answer MGM?

A No, I did not.

Q Did you hear a secretary pick up the phone saying Mr. Benson's office?

A No, I did not. I picked up the phone when Mr. Schweitzer said he's coming on.

Q So that you, in fact, don't really know where Mr. Benson was at the time Mr. Schweitzer called, do you, except to the extent that Mr. Schweitzer said so?

A Mr. Schweitzer had said something to me.

Q But you yourself did not know where Mr. Benson was?

A I did not ask.

Q But of your own knowledge, you did not know where Mr. Benson was when you talked to him?

A No, it was just my assumption that he was at MGM.

Q I understand that.

I have no further questions.

MR. SEATON: Any redirect?

MR. ORMAN: No, Mr. Chairman.

MR. SEATON: Would any member of the Committee like to pose a question to the witness?

Would the respondent like to question the witness?

MR. BENSON: No, thank you, Mr. Chairman.

MR. SEATON: Okay, you are excused, Mr. Kalish.

THE WITNESS: Thank you.

MR. SEATON: Are there any other witnesses that the Guild would like to furnish at this time?

MR. ORMAN: No, Mr. Chairman, the Guild rests at this time.

MR. SEATON: Mr. Miller, would you like to make the presentation of the respondent's case?

MR. MILLER: Yes, Mr. Chairman, I have a few preliminaries before I proceed.

At this time, I would like to renew all of my motions that I made and I would specifically like to make a motion to dismiss the proceedings at this time on what I think is a very germane point. Mr. Chairman, I argued at some length on a number of motions that the Guild here was attempting to exceed its jurisdiction --

MR. SEATON: Now, excuse me. Is this a new motion that you are presenting at this time?

MR. MILLER: Yes. It is a motion to dismiss on lack of evidence.

Mr. Chairman, in response to one of my motions, the Guild counsel took the position that they are interested in prosecuting people who perform writing services during the strike. The Guild has put on a cas.. The Guild has rested. Theoretically,

I can rest and we can go home since I presume being faced with expulsions, suspension and a $50,000 fine. I would at least presume that under all contents of due process, the burden of proof is on the Guild. The Guild presented two witnesses whose testimony is that if Mr. Benson was at MGM and only one of them established that he was and the other one said he may have been at MGM. His testimony, I think, is a little uncertain whether he was there as a producer. He asserts that he was there only to produce and to perform only producers functions. This is the Guild's case. This is the entirety of the Guild's case that a man was there to produce. That, in their opinion, has satisfied their burden of proof.

Counsel represented to me in response to one of my motions that the issues whether he performed writing services and I seriously contend that at this point, Mr. Chairman, that out of the mouths of the Guild's own witnesses in support of the Guild own case, the only evidence you have before you is that he performed producing services, and I seriously urge you for lack of evidence to dismiss the charges at this point in time.

MR. SEATON: Oh, you said that naughty word, in this point in time.

MR. MILLER: I apologize. I meant in this point in the proceeding. I wish the record to reflect that. You must have subconsciously planted that in my psyche.

MR. SEATON: Well, Mr. Miller --

MR. MILLER: And, Mr. Chairman, I would like to say one other thing because I am going to have some preliminary remarks,

and I am going to suggest something that may be out of the ordinary.

For a number of reasons, Mr. Benson is here. I'm sure that the members of the Committee and the chairman might otherwise be reluctant to dismiss the charges at this point because they would like an opportunity to hear Mr. Benson's story out of his own mouth.

However, I have a client to protect. I will not allow him to be called by the Guild. I seriously suggest that you consider the legal insufficiency of the Guild's evidence based on their own position and because I am now seriously considering that I will not call Mr. Benson to the stand based on the fact that the only evidence that we have that he was there to perform his producing functions.

MR. SEATON: I think I speak for the Committee that your new motion is also denied, but we will take it into evaluation and consideration and all of the evidence or as you claim, the lack of it, that has been presented here today in our discussions.

MR. MILLER: Well, if, in effect, in response to my motion, with all due respect to the chairman, if Guild's counsel theory is what we are here to defend against, then I would again seriously ask you to consider what evidence has been introduced in support of the Guild's case that he was performing writing services.

MR. ARNOLD: Mr. Chairman --

MR. SEATON: John --

MR. MILLER: And also -- I did not mean to interrupt you, Mr. Arnold.

If you are favorably disposed to my motion which is based on all legal objective evidence, I seriously urge you to be. I also recommend for your own satisfaction, I would be also willing to have a quasi executive session off the record for you in the presence of Mr. Orman to have any discussion or any dialog with Mr. Benson as you think might satisfy you as to the correctness of your actions even though it may be based on what you think is simply the lack of evidence in the record, but my motion has patent merit on the record as it stands now, Mr. Chairman, and I wish you to seriously consider not only yourself, but the members of the panel.

MR. SEATON: Well --

MR. ARNOLD: Mr. Chairman, do we have a copy of the Strike Rules here?

MR. ORMAN: I can give you exactly one copy because this has been somewhat --

MR. SEATON: Before we get into that, I would like to get the Committee's opinion on Mr. Miller's new motion.

MR. ARNOLD: That is why I would like to see a copy of the rules.

MR. SEATON: Oh, I see.

MR. ORMAN: Could I respond for two minutes to that because Mr. Miller misconstrues the Guild's position.

The Guild's position took one particular hypothetical example in order to demonstrate the logic behind the Guild's Strike Rules. Mr. Miller, I believe, he said the strike rules were vague, ambiguous, and made no sense and therefore was a denial of due process, and . was merely pointing out that there

was obviously a reason behind these strike rules before any one of them was adopted. There had been thought with respect why we need this and why we not need this, and I was merely pointing out the logic behind Section 12 and 13 which Mr. Benson is charged and I was pointing out that one of the possible things that could have been in the mind of the parties that adopted these strike rules was that the danger involved in anybody going in to work for a struck producer, struck producing company.

With all of the many things that he could do to hurt the Guild among the many things that he could do with the very example that I pointed out, and this was not limiting the Guild's position.

The Guild's position is that Mr. Benson violated Sections 1, 12 and 13. Mr. Benson has not denied that he was at MGM during the time of the strike and since he -- at least he has not denied it on the record.

So at this point in time the Guild has certainly presented a prima facie case saying that Mr. Benson was violating Strike Rules 12 and 13. This is the position of the Guild. At least at this point in time is a prima facie case.

MR. SEATON: Now, let's get this in order.

Would you like to read this before we decide on Mr. Miller's motion?

MR. ARNOLD: Yes. Mr. Chairman, to my understanding, according to the charges, that we are talking about a violation of Sections 1, 12 and 13 of the Strike Rules and as far as I know there is evidence that Rule 12 has been violated whether or not the specifics of Rule 13 which is:

"Member is prohibited from entering the premises of any struck producer for the purpose of discussion or sale of material or for any other writing services. . ."

Rule 12 apparently has been violated and Rule 1 may or may not have been, depending upon information which we don't have. I will only suggest that that is reason enough at this moment for us to continue discussing about the case particularly.

MR. SEATON: But I would like to get the Committee's view on the latest motions of Mr. Miller to dismiss on the grounds that he has just stated.

MR. ARNOLD: Mr. Miller's motion was that there was lack of evidence, but apparently under Rule 12, there appears to be no lack of evidence.

Rule 12 is:

"That all members are prohibited from crossing the picket lines established by the Guild to all entrances of the struck producer. . ."

MR. MILLER: Mr. Arnold, the reason that I raised it was that I understood counsel to engraft upon that, the specific charge that we have here happened during the month of April, 1973, and more specifically on April 4, 1973, rendering services for MGM, and he engrafted upon that in his argument, and I believe this is almost a direct quote, the issue is whether he performed writing services pursuant to WGA rules.

MR. ARNOLD: That is only one charge, Mr. Miller.

MR. MILLER: That is correct, Mr. Arnold, and I think that I remarked that this represented perhaps a little shifting in

emphasis. I am perfectly willing to concede that other members have been tried for various violations of various rules and if it is your position that it is a violation for a member to cross the picket line regardless for the purpose of which he does so, regardless of the services which he is going to render when he does so, then I agree with you that there may be a basis for continuance.

Counsel, and I don't mean to give -- say that counsel has relinquished any portion of this case, but counsel did say that the issue is whether or not he was performing writing services and the only evidence that was introduced and I submit that he crossed the picket lines except by telephone conversation, but was that he performed no writing services, that he only produced and so engraft upon that as the possibility phrased by counsel's contention.

For example, a former writer, member of the Guild, who may have not done any writing for ten years and who is now a member of the Maintenance or Service Employees Union crossed the picket line to sweep the floors, that he would be in violation of these rules. That is the logical extension of the rule as worded. I understood counsel to engraft upon, no, we are not going that far. What we are saying is we are asking whether or not he did any writing when he crossed the picket lines. That is what I understood and based on that, I submit that there was no evidence that he did any writing. Only evidence was that he did producing.

If you feel that was not his position and he made out a prima facie case and you are not concerned what happened,

assuming he crossed the picket lines, what kind of services he was rendering, then, of course, we must continue.

MR. SEATON: Let's have a recess.

MR. ORMAN: Can I have one minute. Obviously, we are taking this position seriously and counsel keeps misquoting the Guild's position. I thought I had explained it.

MR. SEATON: We understand, Counsel.

Did you wish to say something, Mr. Miller, before we leave?

MR. MILLER: Off the record, please.

(An off-the-record discussion was held.)

MR. SEATON: Mr. Miller, again it is the unanimous opinion of the Committee not to dismiss on your latest motion. However, we would like to say to you and we had hoped that there could be some cooperation because we would like to be as fair as possible and I assure you having sat on some of these committes that we bend over backwards for fairness.

We would hope that we could question Mr. Benson on just a couple of the points. Now, are you still of the opinion that you would not let him testify or answer any questions?

MR. MILLER: Mr. Chairman, Mr. Benson came down here prepared to testify. I think it is my position that what he will testify to will in no way change, in no material way, change whatever function he may have been performing for MGM at the time.

However, I am prepared to call Mr. Benson as my witness and I will question him and he will then be subject to cross-examination by Mr. Orman and available for any questions

that you and the members of the panel may wish to ask him subject to my objections, if I feel the questions are improper, or objectionable under the rules of evidence or rules of policy.

At the outset, before I put on our case since I must accept your ruling on my motion, I would like to make what I feel is a necessary preliminary statement and I make it in front of this panel with all deference to past panels before which I have appeared, the transcripts which I have seen.

Our firm and other counsel have represented a great number of your members who have been involved before similar panels to face similar disciplinary hearings. Most of those occur at the height of a long prolonged and sometimes a bitter strike. There was not industrial violence or anything like that, but emotions and tempers were high, possibly because it was a long strike and possibly because of the nature of people involved -- creative, intelligent, and sensitive people -- even some on our side. During the course of that strike, there even appeared in headlines in the newspapers "WGA To Try Scabs or Hyphenate Scabs."

There appeared in the newspapers an article "Those convicted will appear on the role of disciplinary honor and perpetuity and be known forever as pariahs to their colleagues."

I have lived with this since last August so I am speaking from memory and if I misquoted, it is unintentional, but I think the gist of what I said is correct.

There also appeared a statement in the press at the

time that Ronald MacDougall, then the Guild's president, "Of course these people are guilty."

And that kind of atmosphere, we were reluctant and we remain reluctant to expose our client to what we feel was essentially that the Committee had to preserve the Guild's integrity and in the integrity of the strike had no choice but to convict these people, and also I would like this Committee to know for the most part it was their own wish that they did not appear. They resented very much being dragged through the newspapers, their names. They resented the ideas that of being expelled from the Guild. They felt a social stigma as well as a professional stigma attaches to that expulsion. Some of these people I have come to know very closely. They are very nice men. They are very honorable men. They are men who do not and would not -- they even refused not only to write during the strike, but many would not even work with non-Guild writers or scab writers during the strike, but they did honor their contracts as a producer or director.

In any event, the atmosphere is not so charred. There is one instance of a midnight phone call of a representative to a man's wife. In that kind of atmosphere, we did not want to bring anybody down to the Guild. There are some people that still feel that way, in the future, we will honor their request not to be present. However, without breaching the attorney-client privilege, Mr. Benson and I discussed this. He felt that -- he will say so in his own words -- he had nothing to hide, that he wanted to talk to you, to tell you his side of the story in the hopes that you would judge him

fairly.

The composition of this panel again appears to me to be fair and reasonable men. I am sure that you will listen to us and make your judgments accordingly, but I wanted you to understand a little bit of the background as to why other members have not appeared, why at this time without waiving any of the objections that we have to jurisdiction or the legality or anything else, at least I can say that the atmosphere is not so highly charred or prejudicial that our client cannot have the opportunity to fairly tell their sotry in the hopes that it will be listened to fairly.

MR. SEATON: Mr. Miller, thank you very much and may I say that, and I can speak for the other members of the Committee, but I deplored those statements in the press. I deplored the $500 reward. I so stated to the executive director of this Guild, and I am sure that anybody with good conscience and those sitting on these committees feel the same. So do not feel that you are in an enemy camp at all, and we do appreciate the fact that you will let Mr. Benson answer a few of the questions that we have.

MR. PEYSER: I do think, Mr. Miller, it should be noted for the record that the denounciation that Randy MacDougall made as president saying in essence they are all guilty was condemned publicly by the council, full page, all over this city and everybody knew that for the first time in the history of this Guild because of that statement a president was thoroughly rebuked and asked not to be involved in the continuing negotiations.

MR. MILLER: I appreciate that, Mr. Peyser.

MR. SEATON: Mr. Arnold.

MR. ARNOLD: An additional piece of information. Those members who violated the strike rules, becoming pariahs and being forever on a black list, which you may or may not know was Strike Rule 30 which was rescinded unanimously by the council for the very reasons that is obvious to all of us. So even at the height of the strike and at the peak of this emotion that you talk about, it became very apparent to the members of this council that that strike rule was inappropriate, and it was done away with.

MR. MILLER: You and I have a different view why that rule was rescinded, and I would like to point out and Mr. Benson can testify when he was served on June 12th with Notice of this hearing that the Strike Rules enclosed were the February 20th Strike Rules.

In any event, I don't mean to undermine my position, my argument, but I would like to point out to Mr. Peyser that I appreciate the action that the Guild took. I would like to suggest that the public and widespread impact to Mr. MacDougall's statement may not have been entirely dissipated by the Guild's subsequent action.

MR. SEATON: In the interest of time, since you have allowed the witness to testify, could you please start the examination.

MR. MILLER: I am prepared to begin.

MR. SEATON: Thank you.

MR. MILLER: I call my first witness Mr. Hugh Benson.

HUGH BENSON

called as a witness on behalf of the Respondent, testified as follows:

MR. SEATON: Would you state your name.

THE WITNESS: Hugh Benson, B-e-n-s-o-n.

EXAMINATION

BY MR. MILLER:

Q Mr. Benson, are you a member of the Writers Guild of America?

A I am.

Q And when did you join the Writers Guild?

A In 1966.

Q And what status of membership did you acquire then?

A Associate member.

Q Have you ever had any membership status other than an associate member?

A Never.

Q Mr. Benson, would you please describe in your own words the extent of your educational background?

A Yes, I went to the seventh grade in grammar school. That is the extent of my formal education.

Q What is your own evaluation of your ability to write, write a story or something normally a writer writes?

A As it is obvious, I am self-taught. Everything that I have learned, I have taught myself by observing others. I have never had faculties to take down a thought and put it down

on paper. Even writing letters are difficult for me. I have secretaries helping me to write letters because of this ineptness for using words. I can say the words, but I can't put them down on paper.

Q Now, on the basis of what work did you apply for membership in the Writers Guild; do you recall?

A Yes, on the basis of some five or six stories for Maverick, Surfside 6, and so forth. Notions that I have had when I was working for Bill Orr as an executive assistant, it was suggested that we get down on paper in collaboration with another person who was a member of the Guild, I gave him the notions, and they wrote the notions up and submitted it to the Guild.

Q Would you describe -- could you give us an example for one of these notions, how you did it?

A Yes. In sitting and trying to get stories was very difficult for us at that time. We were noted for paying little money for writing at Warner Brothers, and we had a limited amount of writers working for us and some were not very good.

We would think up our own stories and in sitting around a table in somebody's office, either mine or Jim Barnett's or Dick Bluel, we would think of stories. And some five or six that I thought up, notions that I thought up, I would tell Jim Barnett who was our story editor. Bill Orr would do the same, and he would go down and put it on paper, and we would submit it to a writer and that would be the story.

Q And you received story credits for that?

A Yes, I received story credits.

Q With someone else?

A With someone else.

Q Did you yourself ever put pencil and paper in connection with any of these at any time?

A At no time.

Q All stories were in collaboration with someone else?

A That's correct.

Q And these are the stories on which you based your application for membership in the Writers Guild?

A That is correct.

Q Now, were you hired by Metro Goldwyn Mayer to serve as a producer for movie of the week entitled Shirts and Skin?

A I was.

Q Do you recall when you made an agreement with them?

A February 20th, 1973.

Q Was that agreement subsequently put into contract form?

A It was.

MR. MILLER: I would like this marked for identification as Respondent's Exhibit 1 document.

I am showing a copy to counsel headed Agreement dated as of February 20th, 1973.

I represent to counsel that even though it looks like the compensation figures have been deleted --

MR. ORMAN: I certainly have no objection as to your Exhibit 1 for identification.

MR. MILLER: Well, that is all I am asking as of now.

(Whereupon the aforementioned document was

marked Respondent's Exhibit No. 1 for Identification.)

Q BY MR. MILLER: I show you this document marked as Respondent's Exhibit No. 1 and headed Agreement dated February 20th and ask you to take a look at that and tell us whether or not you have seen that document before?

A Yes, I have.

Q It refers to, in the body of the first paragraph, it refesrs to Metro Goldwyn Mayer, Hugh Benson and Gay-Jay Productions, Inc.

Are you familiar with a company called Gay-Jay Productions?

A Yes, that is an incorporated company of mine.

Q And is that a company that loans your services?

A That is correct.

Q All right. Does this document reflect the agreement between yourself and Metro Goldwyn Mayer?

A It does except with the deletion of the compensation which I asked to be deleted.

Q I notice this document is not signed.

A It has not been signed.

Q Correct, it is not signed.

A Yes.

MR. MILLER: I will move to introduce this document into evidence.

MR. ORMAN: No objection.

MR. SEATON: May the chair see a copy of that?

MR. MILLER: Certainly.

I have represent i to counsel and the chair that the

figures for compensation at Mr. Benson's request have been deleted from the agreement.

It is in two parts. This really should be stapled to that.

MR. SEATON: This is a synopsis of it?

MR. MILLER: Yes.

(Whereupon Respondent's Exhibit 1 was received into evidence.)

MR. SEATON: You have introduced this contract into evidence for the record, haven't you?

MR. MILLER: Yes, it has been identified and as I understand, counsel has no objection to its introduction into evidence, so it will be marked Respondent's Exhibit No. 1.

Q Mr. Benson, on Page 1 of the standard terms, there is a reference to the Producers Guild of America and producer entitled Producer's Basic Agreement of 1968.

Were you at the time of this agreement a member of the Producers Guild of America?

A I was not a member of the Producers Guild of America.

Q Are you now a member?

A I am not a member of the Producers Guild of America.

Q Would you please describe in your own words what your functions as a producer on Shirts and Skin was?

A On first part of March or the last part of January, I was handling a 92-page script called Shirts and Skin written by Bruce Paltrow. I was asked to read it and after I did, I enjoyed it and after which I was asked if I would like to produce it. I said I would. I was told that I would have to

produce it in with the author himself as this is his first effort as a writer, and they didn't want to pay him the going rate, and they figured this was the way to give him more money. So they made him a co-producer and they asked if I would accept that, and I said I would.

And my function as the producer, I asked the script to be cut because it was too long. With the approval of the network, I hired the director, hired the cast, formed the crew, found the locations, cut the film, worked with Jerry Feelings who starred the film, picked the costumes. The normal functions of a producer is to be part of all of the departments, supervise all departments that make the film.

Q Mr. Benson, do you recall that on or about the 5th of March, 1973, the Writers Guild of America, Inc. called a strike against certain producing members of the producers?

A I did.

MR. MILLER: Let the record show that I am handing counsel a copy of a letter on Metro Goldwyn Mayer's stationery which is dated March 5, 1973, addressed to Mr. Hugh Benson, and I am going to have this document marked for identification as Respondent's No. 2.

MR. SEATON: Is it possible, Mr. Miller, that you could give the Committee just a quick summary of what is in that or would you like to turn it over to the Committee?

MR. MILLER: Well, subject to Mr. Orman's stipulation --

MR. ORMAN: The Guild will stipulate that this may go into evidence as Respondent's Exhibit No. 2.

MR. MILLER: All right. I move to introduce it into

evidence, and I am simply asking Mr. Benson to look at it and I am asking him whether or not he received it on March 5, 1973.

THE WITNESS: I did.

MR. SEATON: I believe this is the standard letter that was sent to most producers telling them that they had an obligation contractually to report for work.

MR. MILLER: I believe it is, Mr. Chairman.

MR. SEATON: Thank you.

MR. MILLER: With the exception that obviously this one is signed by the appropriate officer of the appropriate company.

MR. SEATON: Yes, thank you.

MR. MILLER: Mr. Benson testified, I don't know if you were in conference or not, that he did see this letter on the date.

MR. SEATON: Yes, I heard that.

Q BY MR. MILLER: Mr. Benson, on or about what phase of the production of Shirts and Skin was on about April 4th, 1973?

A We were shooting it then.

Q Did you report to work at MGM on April 4, 1973?

A Yes, I did.

Q What time did you report to work; do you recall?

A At 8:00 o'clock.

Q Do you recall what you did during that particular date? What your normal functions would have been during a shooting day if you do recall that particular day?

A My normal functions of any film that I produced is to be on set from the first shot till the last except when I am

called away for other duties in my office.

Q For what purpose are you on the set?

A To supervise the director and make sure that what we discussed is going on film, to discuss with the director if there is a shot or shots not to my liking and have a discussion and see that either I lose or he loses. In most cases, I lose.

Q Are you also there in case problems or grievances arise which requires settlement?

A I am either there or I am called down.

Q In that event, are you responsible for the settling of these problems, adjusting these grievances?

A That is the producer's function.

Q Was that your function?

A Yes.

Q Among your functions?

A You are right.

Q Now, at some time during April, 1973, perhaps on the 4th, do you recall receiving a telephone call from Mr. Schweitzer?

A Yes, I did.

Q Do you recall what he said to you and what you said to him?

A Not verbatim, but in essence.

Q Would you repeat for the Committee, please, to the best of your recollection what he said to you and what you said to him?

A As I answer all telephone calls, I try to answer all phone calls without a secretary announcing. I picked up the phone. Patty identified himself and we had a long greeting.

He asked me what was I doing at MGM. I told him that I was producing a film called Shirts and Skin for ABC.

He said, "Don't you know that we are on strike?"

I said, "I do know that we are on strike, but I am performing a function that was contracted for as a producer and, therefore, I have to do it, Patty."

I then went into some personal history of why I had to do it, which I will not bring to the Committee's attention.

He said, "Okay."

And I said, "Thanks for calling, Patty," and that was it.

I listened to Patty say that you ought to get in touch with Mike Franklin. I do not remember him saying that at all.

Q You mean you listened to him testify here, but you don't recall this was a part of the conversation?

A No, I don't recall.

Q Did you ever attempt to conceal the fact that you were reporting for work at MGM?

A Absolutely not. I went through the front gate in the morning and at night.

Q In connection with Shirts and Skin, did you perform any writing services?

A I did not.

Q What is your present position with MGM?

A I am executive producer on all on-the-air programming.

Q And what are your responsibilities now?

/ar

A I am extension, as he puts it, of Harris Kattleman,

who was head of the department. I am his extension on the stages, in the field, and so forth, to supervise the making of these films. We had four series that we are making this year.

Q Now, did you do any writing on or about April 4, 1973?

A I never wrote on Shirts and Skin, no.

Q Now, in connection with the entire production, you performed no writing?

A Absolutely not.

MR. MILLER: I have no further questions.

MR. SEATON: Mr. Orman, do you wish to cross-examine Mr. Benson?

MR. ORMAN: Yes, Mr. Chairman.

CROSS-EXAMINATION

BY MR. ORMAN:

Q Mr. Benson, was there any intention of making a television series out of Shirts and Skin?

A No.

Q It was supposed to be just one movie?

A Single.

Q Could you tell us when the first photography commenced?

A Yes, I believe the 1st of April.

Q Can you tell us what day that you received the final shooting script?

A It was approved by the network some 30 days prior.

Q So that would have been March 30th?

A Yes, around there, yes.

Q Were any changes made whatsoever between March 30th and the start of the picture, shooting the picture on April 1st?

A Minimal changes, yes.

Q Who made the changes?

MR. MILLER: Objection. The witness has testified and I will explain my objection in a minute.

The witness has testified that he has performed no writing services.

If there were changes made, I must respectfully request that they must not be inquired into except to the extent that he may have participated in them. I regret very much doing so before this particular panel and I would do so somewhat very vigorously with all due respect before some other panel.

I have been exposed to the widespread of what I considered a turn of a rein of terror that was imposed during the strike to mete out, to find out people who did writing during the strike, and in all good conscience, neither myself and I am sure Mr. Benson would want to reveal to you the facts that he knows of someone who may have made writing changes during the course of the strike.

Based on the fact that I know new charges are constantly coming forth from the Guild -- we were just served with a new charge today against a man who has already been expelled and fined $50,000 -- so I must instruct him that he cannot answer this, that he cannot give to you the name of someone who may have performed writing services during the

strike. However, I hope that you will not take this as an inference reflects in any way on his personal testimony that he performed no writing services, and I will not object to any inquiries into that area.

MR. ORMAN: May I be heard, Mr. Chairman?

MR. SEATON: Yes, Mr. Orman, go ahead.

MR. ORMAN: Counsel is assuming facts again, I might say, that are not in evidence. He is assuming the purpose of what I'm asking -- the reason I am asking Mr. Benson this question. I am merely in the process of cross-examining Mr. Benson, and I might point out that you have a great range of permissibility when you cross-examine. I might point out first of all, this is not in a court of law, so certainly we are not bound by the rules of a court of law. Point two, even if this were a court of law, I point out that California has recently amended the rules of evidence, providing that a cross-examination was not any longer limited to what was brought out in direct examination. And for all practical purposes, it is unlimited. I submit that my question is perfectly proper and his client is required to answer it.

MR. MILLER: My objection does not go to the propriety of the question. It goes to all of the circumstances, the consequences that can emanate from the answers, to have it on the record here, under sworn testimony, that somebody was performing writing services.

In view of the vigorous prosecutions of all alleged violators of the Guild Strike Rules, I must respectfully request that Mr. Benson no be compelled to name names.

MR. ORMAN: I would like to make one more point, Mr. Chairman.

MR. SEATON: Yes, go ahead.

MR. ORMAN: In effect, what counsel is stating is that Mr. Benson wants to plead the Fifth Amendment for someone else. Well, you may not plead the Fifth Amendment for someone else. In fact, that a third party may be put in jeopardy that has nothing to do with particular hearing.

MR. SEATON: Well, Mr. Orman, it would seem to me that Mr. Benson has testified that he didn't do any writing. Now, if he names a writer, he is informing.

MR. PEYSER: Our purpose is not to look for scabs here today.

MR. SEATON: I will accept Mr. Miller's objection.

MR. ARNOLD: Yes, I was going to say, Mr. Chairman, that we are very well aware that there has been a lot of scabbing during the strike. Some people are known and some people are not, but we have taken the position we do not hold with the concept that was proposed that we are going to pay the informers. We will either find out about people through the channels, credits and scripts and so forth --

MR. PEYSER: Through the rewrites.

MR. ARNOLD: We are not trying to -- or we do not want to put anybody in the position of an informer.

MR. ORMAN: I will withdraw the question and go on with the next question.

THE WITNESS: I must say for the record and without counsel giving me permission to say, there was not a scab on

on this picture.

MR. MAYES: May I ask a question for clarification?

MR. SEATON: Yes.

MR. MAYES: I think he must have misunderstood. That is what I want to clarify. I think Mr. Benson said the shooting script was ready 30 days prior to April 1st rather than March the 30th. He said 30 days prior.

MR. ORMAN: I should have said February 28th.

MR. MILLER: Around the 1st of March.

THE WITNESS: Yes.

Q BY MR. ORMAN: You said after and the shooting started about April 1st.

A That is correct.

Q Were any changes made in this shooting script during the course of the shooting?

A Just the normal line or word changes that a director would insist upon or I would insist upon.

Q Well, were you ever called -- did you ever suggest any changes made in the --

Did you make any changes in the shooting script?

A A word or line, yes.

Q Did you make this suggestion after March 5th?

A Yes.

Q After March 6, 1973?

A Yes.

Q Do you happen to know if you made a suggestion on April 4th of 1973?

A I could not recollect if I made any.

Q When you say only a word, give us an example of any changes that you suggested on this picture after March 6th, 1973?

A Yes, changing streets of New York to streets in Los Angeles.

Q Did you make any other suggestions that you can recall?

A Yes, I told a person to put back that five pages that had been deleted from the original draft because the script was short.

Q Can you tell us the date you made this suggestion?

A Around the third day of the shooting.

Q Which should be about April 4th?

A 3rd or 4th.

Q So you could have made this very suggestion on the very date?

A I could have.

Q And you told the persons which -- which means the writer -- I don't want you to name the writer -- you told the writer to put back the five or six pages that had been deleted because the script was short?

A Right.

Q And you could have told him that on the day of April 4th, 1973?

A I wouldn't have known. I don't think I would have known the first four days that we were short. As a matter of fact, it may have taken one or two other days.

Q But it could hav been within this time frame?

A It could have been.

MR. ORMAN: Mr. Chairman, will you forgive me for limiting it within this time frame?

MR. SEATON: As long as you do not say in this point in time.

Q BY MR. ORMAN: During the course of the shooting or it started about April 1st approximately and when did it end?

A On the 15th of April.

Q Would it have been a 15-day shooting schedule?

A No, it was 11-day shooting schedule.

Q During the course of this shooting, were you ever called in because of a dispute on the set with reference to the discrepancies that somebody didn't like the way the script was written, the way the script read?

A No.

Q No actor said I can't act it this way?

A No.

Q The director of the company said could you change this?

A No.

Q In other words, were there any changes that were made emanating from you?

A The director had that lead if I was not there to change a lead or know if the actor could not say the line with ease.

Q During this period of April 1st to April 15th, was your sole duties related to Shirts and Skin?

A Yes.

Q Did you have any other particular projects in mind at

that time?

A None whatsoever.

Q Nobody had contacted you and said perhaps after this thing is done, would you care to work on something else?

A No.

Q Was there any unfinished business that you might have had to do during this period, say, April 1st?

A No, I had done a film for MGM, but that was three months prior, four months prior to April 1, and that was completed.

Q What was the name of this film?

A Deadly Honeymoon.

Q And this was just a moving picture; it was not a series?

A No, it was a motion picture, theatrical motion picture.

Q You had no further service to perform on this up to this time?

A No.

Q Therefore, between April 1st and April 15, your sole duties absolutely related to Shirts and Skin?

A That is correct.

Q And you did not -- did you have an exclusive contract with MGM?

A No, I did not.

Q Were you permitted to engage in outside services?

A I was exclusively within the period of making the film, but non-exclusive after the film was made.

Q That is what I am saying. During this period, would

it have been permissible for you to contact another motion picture, another producer about another project?

A While I was exclusive making the picture, nothing would have stopped me from going to another motion picture company and trying to deal with them subsequent to making of this film.

Q Did you during this period?

A I did not.

Q And do you recall specifically what you did on April 4, 1973, which is the date at issue?

A What I did?

Q That day, if you can recall?

A I probably was on the set all day or part of the day or in my office after lunch.

Q Well, I'm -- again, like you did say you did make a suggestion that five or six pages that had been deleted should be reinstated.

Does this refresh your memory? Could it have been on April 4th that you might have gone down, might have spoken to somebody?

A Very possible, but I do not recall specifically that it was on April 4th.

Q Did you discuss with the director that it was too short and on what basis did you make your conclusion that the script was too short?

A By the amount of minutes we were shooting in the amount of days and the amount of pages.

Q Then you made a determination. Did you discuss this

with anybody?

A I discussed it with the director.

Q Do you know when you discussed it with the director?

A Not offhand.

Q Do you remember what you said to him?

A After getting the minutes from the script clerk of the amount of days we had shot, I said, "I have a hunch we are short."

He said, "I think we are, too, because we are running about 45 seconds a page and that we would be short."

I then went back to the person and said, "Let's put back the scene that we had deleted."

I called the network and asked for permission to put the scene back.

Q In which sequence did you do this? Did you first call the network for permission to put the scene back?

A Yes, that is correct.

Q And then you went to this unknown writer and told him to put it back?

A That is right.

Q Did you make any suggestions when you told him to put it back in terms of changing some of it?

A Originally, it was a seven page scene, yes, and I said to cut it down to about five pages.

Q Did you make any other suggestions?

A No, the scenes were very good.

MR. ORMAN: I have no further questions.

MR. SEATON: Do you wish to redirect, Mr. Miller?

MR. MILLER: Yes, I do.

FURTHER EXAMINATION

BY MR. MILLER:

Q Is the movie of the week supposed to be a certain length of time to fill a certain time spot?

A Yes.

Q Now, so that you have certain time, certain running time that you must aim for in producing a movie of the week?

A Right.

Q Now, the scene that you wanted put back in, is that a scene that had been already written?

A The scene had been written and deleted from the original 92-page script that I had read.

Q So the only suggestion you made was for the writer to put back in the script the scene that had already been written, but just deleted?

A That is correct.

Q Now, you also ordered him to shorten the scene; is that correct?

A That's right.

Q In ordering him to cut the scene, did you make any suggestions to him as to what materials should be deleted from the scene?

A Yes, I did.

Q In deleting that, were you talking about dialog?

A I was talking about dialog, yes.

Q And was the scene shortened from what was seven pages

five pages?

A Seven to five and a half, I believe it was.

Q And then that fit the time requirement that you had in mind?

A Yes.

Q Did you make any suggestions that in your opinion that involves significant changes in plot, story line or inter-relationship of the characters?

A No.

Q Did you make any of the changes yourself?

A No.

Q You merely instructed someone to make those changes; is that correct?

A Right.

MR. MILLER: I have no further questions.

MR. SEATON: Mr. Orman, do you wish to recross-examine?

MR. ORMAN: No.

MR. SEATON: Any member of the Committee wishes to ask the witness a question?

MR. PEYSER: Mr. Benson, did you ever consider yourself as a writer-producer?

THE WITNESS: In all actuality in the true sense of the words, no.

MR. PEYSER: You have always thought of yourself as a line-producer?

THE WITNESS: That is correct.

MR. PEYSER: I am just curious about that, why are you in the Guild? I know that sounds dumb.

THE WITNESS: No, it is not dumb. I think it is a very good question. I joined the Guild in 1966.

MR. PEYSER: 1966?

THE WITNESS: Yes, isn't that right, '66?

MR. PEYSER: Yes, that is what you said before.

THE WITNESS: Isn't that the right date?

MR. ORMAN: Yes, that is the right date.

THE WITNESS: I joined in 1966 because I thought it would be a good thing to do because I had visions that I had the capability to write. I subsequently found out that I could not. I stayed in the Guild because I had a lot of friends in the Guild and I respect and admired, socialized with, worked with, and to me, it was a very proud thing to stay in the Guild to be called a member even though I was an inactive member, whatever status I was, I was a member of the Writers Guild.

As you see by my record, I topped a story with Richard Bluel in 1969. I sold it to Disney for what I thought was good money and that too prompted me to stay within the Writers Guild. Maybe I could come up with another idea or series of ideas.

During the course of my tenure at Warner Brothers, for 12 years I was instrumental with others in coming up with 11 series ideas, but I didn't get any benefit out of it. So I thought by being a member of the Guild that if I came up with a series idea, if and when I did, that I will get the benefit slip that I deserved.

MR. PEYSER: But you were writing in '58 in all of these figures here, these dates here, of these other credits that you

have were before you were a member of the Guild.

THE WITNESS: That is right.

MR. PEYSER: So for six years --

THE WITNESS: You had to have a certain amount of credits to become a member of the Guild. I did not have enough credits until 1966 to become a member of the Guild.

MR. PEYSER: Okay.

MR. MILLER: Mr. Peyser, I would like -- were you referring to his credit record?

MR. PEYSER: Yes.

MR. MILLER: When you said, "You were writing in '58"?

MR. PEYSER: Yes, and I understand the talking-writing. I understand that.

MR. MILLER: Right, that is what I wanted to clarify. At least his testimony is why and how he received the writing credits.

MR. SEATON: Mr. Benson, regarding that Disney Production, I find here that you were -- I don't want to use the word collaborating -- but you were associated with two writers in this?

THE WITNESS: Yes.

MR. SEATON: And there was a $15,000 option and if purchased $25,000; was it purchased? Was the picture ever made?

THE WITNESS: I think it was announced last week that the picture was to be made with James Garner.

MR. SEATON: Now, in this capacity, you acted -- how did you act, as an idea man?

THE WITNESS: An idea man, absolutely.

MR. SEATON: You did no writing?

THE WITNESS: None whatsoever. They had presented a story to me, and I saw the possibility as I had been in Hawaii on the big island, and making it in Hawaii and doing what had not been done before, the Hawaiian Calvary.

MR. SEATON: I am curious, Mr. Benson. Were you ever called by the strike office as to go on picket duty?

THE WITNESS: Once.

MR. SEATON: What was your reply?

THE WITNESS: I could not. It was just the day after I returned from the hospital, after being in the hospital for 17 days for an abdominal operation.

MR. SEATON: What day was this, Mr. Benson?

MR. PEYSER: Roughly?

THE WITNESS: Well, I got out of the hospital prior to my getting the job in February.

MR. SEATON: I see. So this was sometime in February?

MR. PEYSER: We didn't go out until March.

THE WITNESS: March 6th you went out. So it must have been a couple of weeks probably --

MR. SEATON: After that. So that you were in the hospital prior to this?

THE WITNESS: I was in the hospital prior to the strike going on. I took the job two days after I got out of the hospital which I had suffered from since.

MR. PEYSER: Did they call you once and you had a medical reason why you couldn't take it?

THE WITNESS: That is correct.

MR. SEATON: Were you acting as a producer at Metro at the time that you refused picket duty?

THE WITNESS: No.

MR. MILLER: Mr. Chairman, before we close, I would like to make a statement on this. I would like to enter for the record my objections to the questions that he is not charged with failing to report to picket duty.

MR. SEATON: No, no, I am just curious from the Guild's stand --

MR. PEYSER: For ourselves, Mr. Miller.

MR. MILLER: I had a recent experience, I think I overheard [illegible] whisper to Mr. Seaton a client that our firm represented, Da[illegible] Victor, was expelled and fined $50,000, and you had a hearing. Now, all of a sudden, and I need not characterize it here, but he is charged again. They are new charges.

I don't want to contribute or I don't want my client to contribute to a basis for any newer expanded charges, but I appreciate the good faith in which these questions are being asked.

THE WITNESS: May I amend, sir, my answer. I wish to amend my answer. Yes, I was working. I was working three days when I received, I believe, three or four days when I received the call from you.

MR. SEATON: So your answer was a medical condition and not because of --

THE WITNESS: That is correct.

MR. SEATON: The reason for Mr. Peyser's remark, when you mentioned $50,000, Mr. Mahin said, "Who is that?" And he said

David Victor and that was what he was referring to and that was the only reason that David Victor's name was mentioned.

MR. MILLER: He was also a gentleman who had been charged --

MR. SEATON: Yes, I know. Now, going to changing on the set, I am very experienced in this.

How many of these changes, these line changes you talked about was due to an actor saying I can't read this or this is too much of a mouthful?

THE WITNESS: In this film, many because of one actor --

MR. SEATON: I won't ask for the name of the actor.

THE WITNESS: No, I hoped you wouldn't.

MR. SEATON: I think I have worked with him.

THE WITNESS: Yes, you have.

MR. SEATON: Now, this is a personal question.

How did you get out of possibly joining the Producers Guild? I would have loved to have gotten out of joining it.

THE WITNESS: I was a member of the Producers Guild, Mr. Chairman. I was a member of the Producers Guild while I was an executive producer at CBS. CBS was not a signatory to the Guild agreement. I thought it was terribly unfair that I had to pay 1 percent of my earnings and I withdrew. I therefore set my own company up, Gay-Jay Productions, and I have been hired on that basis since because I will not join the Producers Guild.

MR. SEATON: Mr. Mahin, do you have a question?

MR. MAHIN: Yes, two.

Mr. Benson, after the strike was called in March, why did not you call the Guild and apprise them of your position

and why you had to cross the picket line?

THE WITNESS: John, because I felt that I was honoring a contract that I had signed in good faith as a producer and I had not hid anything or surreptitiously entered the premises. I passed men that I knew, men who had worked for me, people who were friends of mine, people who knew me casually, and they could have reported me immediately.

MR. MILLER: Mr. Mahin, may I also point out for the record, in other hearings there have been stipulations entered into that /if a person in Mr. Benson's position called the Guild for such permission, it would have been denied.

MR. MAHIN: I did not necessarily -- I didn't question it as asking for permission, just apprising them of the fact.

THE WITNESS: I didn't think of it. I knew it would be reported immediately.

MR. MAHIN: Now, you testified that there was no scab working on the picture.

THE WITNESS: That is correct.

MR. MAHIN: Now, if the writer that you -- this unknown writer -- was made to put back these seven pages which you reduced to five and half from the original script, put it back, if you knew him to be a fellow-member of the Guild, would you have worked with him?

THE WITNESS: I couldn't answer that, John, I don't know.

MR. MAHIN: You don't know whether you would have worked with him or not?

THE WITNESS: That is right, I don't know.

The urgency of my -- again, I never bring my personal

things into business, but the urgency of my having to work, I don't know whether it would have prompted me to work with him or not. Probably, I would have worked. I had to work.

MR. SEATON: Excuse me, Mr. Mahin.

I thought you testified that the director was cutting out --

MR. PEYSER: Somebody else.

THE WITNESS: No, I said somebody else.

MR. SEATON: I am sorry. I thought you said the director.

MR. MAHIN: Then you again say there was no scabs at that time?

THE WITNESS: That is right.

May I have a moment with counsel?

MR. MAHIN: Yes.

(A brief discussion off the record.)

MR. MILLER: Mr. Chairman, I have been advised of the circumstances of a particular writer involved and I think Mr. Benson can explain in his own words. Well, because of my understanding of the status of the law, this man was not a member of the Guild during the strike. My own understanding is that the Guild definitely has no jurisdiction over him despite whatever interpretations your attorney or other Committee members may gloss/it or. So Mr. Benson, I think, can explain to you the circumstances surrounding under which the writing was done and other changes were done and I will even allow him to give the name of the man, the functions which he performed.

MR. SEATON: Well, if he is not a member of the Guild, I

am not interested.

MR. PEYSER: Yes, I am interested.

MR. MILLER: He is currently a member of the Guild. He joined the Guild. The Guild accepted his money, so, therefore, he is currently a member.

MR. SEATON: Please go on, Mr. Benson, and explain it to us.

THE WITNESS: His name is Bruce Paltrow. This was a first-time effort of his. The script was sold to MGM and ABC prior to the strike, much prior to the strike. He acted as my co-producer, he was not a member of the Guild and did not scab.

MR. MILLER: And he is the gentleman that performed the changes?

THE WITNESS: Yes.

MR. SEATON: Mr. Arnold, do you have any questions?

MR. ARNOLD: Yes, I have one.

I would like to get into something. That is particularly important to me in my relationship to this Guild as a professional writer.

You said that you don't think of yourself as a writer, and yet your association with the Guild had meaning for you.

THE WITNESS: Yes, it did.

MR. ARNOLD: Are you represented by an agent and do you have a writer's contract as a writer?

THE WITNESS: No, I do not.

MR. ARNOLD: In the past --

THE WITNESS: I am sorry. Let me amend that. I am represented by an agent on a packaging agreement.

MR. ARNOLD: But I intimate the creation of packaging.

THE WITNESS: Yes.

MR. ARNOLD: Have you ever received a created by-credit on anything?

THE WITNESS: No.

MR. ARNOLD: Whatever writing credits -- have you ever received any writing credits either by story or some form of writing credits through the years, screen credits?

THE WITNESS: Yes, just as specified in this document here.

MR. SEATON: Prior to '66?

THE WITNESS: Prior to '66, yes. I anticipate that I will get a story body on Paneoli, which is being made by Disney on a series that I wholly created by words, a story of my life which is on a 26-week calling. I did not get rated writings on my story of my life.

MR. ARNOLD: Have you ever received any residuals for writing?

THE WITNESS: No, none.

MR. ARNOLD: So that your health and welfare and pension status in the Guild is nil?

THE WITNESS: Nil.

MR. ARNOLD: Then, I've got to ask you one question because it has a very important relationship, as I said, for me as a writer in this Guild.

So that the situations that we face now might be presented in the future because obviously what we are facing is a labor union.

Is that at any time under any fair bargaining practice

unit in the future that professional writers find themselves in a strike position, so that we don't run into this compromising proposition because of people in their hyphenated status in the industry. So that, in effect, our position in a strike can be hurt, and that we as professional writers suffer because what we are trying to do is obviously withhold writing, creative writing services, and that everybody who is a member of this Guild and who owes an allegiance, if you will, a responsibility to the other member of this Guild, should do so primarily because they acknowledge their position in the Guild. They acknowledge their right to be members of the Guild, and they wish to be members of this Guild.

Do you want to be a member of this Guild?

THE WITNESS: Yes.

MR. ARNOLD: Do you want to be a member of this Guild because you consider yourself a writer or for any other reason?

THE WITNESS: I think it is a combination of things because I consider there is a possibility that I might be able to write something. Therefore, I want to be a member of the Guild to be protected with what I write, series idea or picture idea.

MR. ARNOLD: Then, you would not resign from this Guild if it was possible?

THE WITNESS: No, I would rather not.

MR. ARNOLD: Then if you wish to be a member of the Guild, and I'm relating this to any future member of this industry who feels that he wants the professional association with the Writers Guild of America, do you feel then that you have a responsibility to the other members of this Guild and to the

Guild in turn are going to give you the benefits of their position and their work and all the supplementary benefits that this Guild has fought for over a long period of time? Do you feel that you have any responsibility to the Guild?

THE WITNESS: I believe in the By-Laws of the Guild. Excpet for one thing, I believe if I function as a producer and hired as a producer, that I should perform that duty as a producer, especially with the, again, extenuating circumstances that I had at that time which I would not care or do not care to tell the Committee about because it is a personal thing.

MR. ARNOLD: The reason I am bringing this up is that because it is very germane to all the situations that have occurred, and it is very important to me because I have my particular feelings on it and I am sure that everyone else does too.

Do you know what I am saying?

THE WITNESS: I understand very well.

MR. ARNOLD: Do you feel, Hugh, that it is possible for you as a man who considers himself creative and if you are willing to acknowledge as all of us do professional writers, that it all begins with the words on paper, do you feel that it is possible to separate yourself creatively from your job as a producer and the creative guidelines for a picture that is in production as it relates to, well, I want to put back five pages or I want to add seven or this actor doesn't feel comfortable with this line, so we will change it and make him comfortable.

Do you feel that that creative responsibility is

primarily writing or producing?

MR. MILLER: Mr. Chairman, I appreciate the fact that this is a dialog that I feel should roam as far afield as the member of the Committee desire it to, and in that light, I would appreciate the courtesy of the Committee to make their questions a little less complex, a little less glossover, a little more definite, a little less compound.

For example, you just used an example, a creative example. The entire testimony that Mr. Benson gave was that five and a half pages were inserted, not for creative or aesthetic value, because they needed X more mimutes for the 90-minute movie of the week, and somehow I feel that perhaps you have glossed over that testimony in phrasing your question and -- well, I am not entering formal objection because I appreciate that this should have a broad scope. I would appreciate it if what they are asking would have a little more specificity.

THE WITNESS: But I will answer.

MR. MAHIN: I think it is a very good point and a very good question.

You are a producer; you are a writer-producer. You operate your own way. If you were not a writer or a producer, you would operate the way you would think a producer would operate, as you as an individual would operate.

THE WITNESS: I saw you turn to Mr. Seaton when I mentioned that I am on the set from the first shot to the last shot, that's the way that I operate. That is the way that I taught myself and as supervising t ese productions that I am in now at

MGM, I am there for the first shot and I go from stage to stage to stage in the morning at 7:30, and I try to be from stage to stage to stage until the last shot at night, and I continually go to those stages. That is the way that I function as a producer.

Yes, I think as a producer I did right in asking for those five and a half pages to be put back so that I could complete the production as the function I was performing was producing the film.

MR. MAHIN: All right. I just have one last question.

I can understand a man who has found himself in this position throughout the strike, saying, I am not a writer. I haven't written for 20 years or I don't write at all and I am a member of the Guild because the requirement of having sold a story 15 years ago forced me to be a Guild member, and I shouldn't be a member of the Guild and I don't want to be a member of the Guild and you have no right to govern my activities as long as I am not writing.

Then from my point of view, I say, I agree with that man. I agree with a man who is no longer performing any writing service who doesn't want to be a member of this Guild and finds himself in an awkward position because of a strike.

What I do not understand is the position of a man who says, "I want to be a member of the Guild. I want to be considered a writer, producer, producer-writer. I want the association. I want the dignity of the association, and I want the benefits of the association."

And if you feel that way then, how can you not abide

by the rules of the Guild?

THE WITNESS: Danny, I believe each man has a conscience and his conscience dictates what he has to do. At that time, at that moment when I was released from the hospital, it was necessary for me to work. Therefore, I went to work and that's the most that I can say.

MR. SEATON: Any other questions from the Committee?

MR. PEYSER: I have just one question.

I know what you mean. I know a lot of what of what you are saying here, but I was very troubled by John Astin who picketed me /with and who was offered a job in your movie.

THE WITNESS: That is correct.

MR. PEYSER: And John needed money and said, "I can't cross the line."

THE WITNESS: That is right.

MR. PEYSER: Now, he's really not a writer. He has written less than you have written, and he said, "I just can't cross the line."

And I said, we sometimes -- one of these days, everybody is going to have to sit down and talk about this because I think that this is wrong. You are not going in to write. You are going in to act. And he said, "The rules are that I am living by, that I cannot cross this line."

THE WITNESS: I commend him for searching his conscience. My conscience dictated to me that I had to go to work.

MR. PEYSER: Fine.

THE WITNESS: If there are no other questions, I have one further thing to say.

In 1960, as you know, there were great many WGA writers around. A lot of them are still working, some have died off and others because they did not have any talent, stopped writing. Very few people in 1960, everybody knew who was writing were penalized or brought up on charges for

For some reason this year and possibly, you are right, I don't know, you are doing it this year. Whatever you decide about me is your prerogative, of course. I wanted -- I will reiterate again -- I wanted to be a member of the Guild. Because of circumstances, I had to report to work and I did. I make no apology for it because I think apologies of this type stink. I am not a fink in any way. I sympathize with the Guild, not because of my future, because I hope that I will work, but I hope that you will continue to let me stay in the Guild. That is all I want.

(A short break.)

MR. SEATON: Mr. Orman, do you wish to make a closing statement?

MR. ORMAN: Mr. Chairman, the Guild wishes to waive closing statement.

MR. SEATON: Mr. Miller, do you wish to make a closing statement for the respondent?

MR. MILLER: Yes, Mr. Chairman. First, may I ask or I would like to move that the Constitution of the By-Laws of the Guild be considered as entered as evidence by reference to prior proceedings?

MR. ORMAN: So stipulated.

(Whereupon the aforementioned documents were entered

into evidence by the Respondent.)

MR. MILLER: I would also like to move that the Strike Rules be admitted into evidence by reference to this in prior proceedings.

MR. ORMAN: So stipulated.

(Whereupon the aforementioned document was entered into evidence by the Respondent.)

MR. MILLER: Usually, it is proper to waive closing argument, and I am sure you have heard enough of me by now.

I always like to refer to the Writers Guild Basic Agreement, which is a 157 typewritten unfortunate marriage of writers and lawyers, and when they get together, this kind of thing happens. I will be very brief. I would like to clarify a few things. One is that at the time Mr. Benson went to work there, there was a major publicity release in the trade papers, and I would like to point out that at no time did Mr. Benson try to conceal the fact that he was reporting for work. I think there was a question that Mr. Mahin asked that may have implied that, but I want to clarify that for the record.

Second, I would like to point out here, under quite unique circumstances, Mr. Benson somewhat eloquently explained his side of the story, and the evidence is before you to consider. I think that the very preceptive and insightful questions of the Trial Committee have indicated a ligitimate concern of the members of the Guild and particularly, Mr. Arnold's questions.

I would like to point out, however, that there are matters of conscience and integrity on the other side of the

fence. We have all heard the so-called term writer-producer or producer-writer. My experience and the exposure have been that there are two kinds of hyphens. One is a writer-producer. He does a lot of writing. He has made a lot of writings.

(Telephone interruption.)

MR. MILLER: As I was saying, there is a two hyphenate writer-producer, producer-story editor, perhaps somebody like John Furia who testified that he was a story editor on Kung Fu as distinguished from story writings. He did one of the scripts himself. Now, I think he has been elevated to producer, a true hyphenate, and there is a man like Mr. Benson and Mr. Epstein who may have received a writing credit --

MR. PEYSER: Excuse me. I object to that, if I may.

MR. MILLER: Elevated to a producer?

MR. PEYSER: No, I don't think you should discuss anybody else. Mr. Epstein or anybody, I don't see any reason for that. I think we should only talk about Hugh. Do you get my point? When you start talking about other people, you say Epstein. Who Epstein? What Epstein?

MR. MILLER: Strike my reference to Mr. Epstein.

MR. PEYSER: All right.

MR. MILLER: I didn't mean to impune Mr. Furia, but I assume that everybody was fammiliar with him since he held an office in the Guild.

What I mean is someone such as Mr. Benson who received a few writing credits in the past, and in Mr. Benson's case, particularly, he didn't even do any writing. He suggested a story, collaborated with a writer who put it down and a third

writer was hired to do the teleplay and Mr. Benson has devoted virtually full time to his capacity and function as a producer. What he really is, is a member of the Writers Guild, doing another job.

Just this for an example, it may happen some day that an attorney will write a script, join the Guild, never write another thing and be employed as an attorney or an executive in the motion picture studio. And I think sometimes that these two kind of people are treated the same way.

As a supervisor, as a producer, an employer relies on the integrity of this man's judgment to supervise the production of either a half hour or an hour television episode or movie of the week or theatrical production, something which may involve expenditures of millions of dollars, and they rely on them for their judgments and for their abilities and their experience. And in this instance, not for the writing, they don't hire them as a writer. The writing services on this particular show were already completed.

Mr. Benson reported for work. We don't dispute that. He reported he was at MGM on April 4, 1973. He was required to be there by MGM to perform his service as a producer. I think if you will examine that contract, which is in evidence as Exhibit No. 1 for the respondent, you will find that there is no reference to writing services. He was not hired to do any writing. He didn't do any writing. The only writing services that remotely comes close to writing during the strike was a suggestion of certain changes that he then conveyed to Mr. Paltrow, services which are specifically excluded from the

definition of a writer.

Now, without naming names, Mr. Benson has already asked and answered questions along this line, that the gentleman who crossed the picket line to perform producing functions, themselves acted out of conscience and were honorable. There were some of them who not only refused to do any writing, but all refused to do any writing. There are some who refused to work with scabs. They said, "No, we will do our hiring from casting. We will set locations. We will do all of these functions, but we will not in any way undermine the Guild's right to withhold writing services from the company during a lawful economic strike."

But they had a contract which says you are hired as a producer to do such and such and they felt they must honor that.

There are others who for various reasons may have been such as Mr. Astin whose name I think you brought up, Mr. Peyser, decided to honor the Guild's picket line. I don't mean to impune Mr. Astin's motives. So I will just make a general reference to the widespread literature, publicity and phone calls threatening these people that they will never again work in the industry if they crossed the Guild's picket line, in that kind of atmosphere, many people refused to cross the picket line and some crossed the picket line, not to perform writing services, but to produce their producing functions.

One other thing Mr. Arnold mentioned that if you are a member of the Guild and you believe in it, you should have abided by the rules and regulations. As an associate member,

he had no voice in adopting those rules and regulations, and I think there was honest belief on his part and other parts of other people that those rules and regulations do not apply to him as a producer. They only applied to him that if he was writing, if he was hired or employed as a writer. That the Guild's Rules and Regulations did not extend to the producers and executives. He has said so, so it doesn't apply to him. He has said that he will not resign from the Guild. As you know, there were not only reactivation withdrawn, but there is a rule saying that you can't resign from the Guild except on a two years notice.

I think the Constitution says that the board of director may in its discretions withhold your right to resign for a period up to two years. That is in the interest of a strike, but the rule was then publicized in a different context of the strike.

Most important, I would like now on the basis of all of the evidence that has been introduced, not only to the specificity of the charges, but also to the importance of the Guild's jurisdiction of this Committee to discipline people beyond those who are employed as writers, whose services are defined as writing services, I move to dismiss these charges against this man right now, and I ask you to do so on the basis of the evidence that has been presented here, not only by Guild's counsel, of course, because that evidence shows that he was producing, but on the basis of Mr. Benson's description of what he was doing.

I would like for each one of you to really search

your minds and your integrity as to whether inde ently judging this man, you can't dismiss these charge If you do, you will be setting a precedence that maybe this Guild can't live with. Maybe setting a preceden that they can't live with if there is another strike, if not four years from now, ten years from now, and it may preclude your judging this man independent of those considerations.

I do hope that this Committee has the independence to judge the evidence and will not consider what, if any, precedence this may set.

I have taken up a lot of your time. I appreciate the courtesy that you have shown me, and I appreciate more than that, the courtesy that you have shown Mr. Benson here. The dialog I think was on a high level. It was on good faith and it was unemotional. I urge you because of the fact that he did not perform any writing services to dismiss the charges.

I would also like to remind you that we ran a very great risk in asking Mr. Benson to testify. The charge was specifically limited to April 4th, 1973. It is obvious from Mr. Benson's testimony that he was engaged in supervising the production of this motion picture, that he was probably there on April 3rd and April 5th as well as other times. I hope that you will at least recommend that this will not be the basis for future charges that Mr. Benson must come in and defend himself again. I hope you will at least treat our producing him as an effort in good faith to resolve these issues, these specific charges and his innocence of violating any of the Strike Rules as they are inte ded to effect writing. Thank you.

MR. SEATON: Mr. Miller, thank you and you can be sure that the Committee will take into consideration everything you have said and the courtesy of Mr. Benson coming here. I just want to say that this matter will be taken under submission by the Trial Committee. After this Committee has deliberated, it will submit its written recommendation as to guilt or innocence along with its recommendation of disciplinary action, if any, to the Board of Directors who under the Guild's Constitution and By-Laws have the authority to either accept or reject or modify this Committee's recommendation.

In order for this Committee to make a recommendation of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the respondent be acquitted of charges.

If there be nothing further, this hearing is adjourned.

(Whereupon the hearing adjourned at 5:50 P.M.)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I, WILLIE B. BROWN, a Notary Public for the State of California, certify:

That the foregoing transcript of proceedings was taken before me at the time and place therein set forth and recorded by me stenographically; thereafter; my notes were transcribed into typewriting under my supervision.

In witness whereof, I have subscribed my name and affixmy my seal this 7th day of September, 1973.

OFFICIAL SEAL
WILLIE B. BROWN
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires June 10, 1974

/s/ Willie B. Brown
Notary Public in and for the
State of California

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
DAVID LEVINSON)
)
)

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

July 16, 1973

ORIGINAL

REPORTED BY: EILEEN R. ROSENTHAL, C.S.R.
CERTIFICATE NO.:
2596

BILL CUFF & ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
13817 CALVERT STREET
VAN NUYS, CALIFORNIA 91401
873-7410

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST, INC.,)
)
and)
)
DAVID LEVINSON)
)
)

TRANSCRIPT OF PROCEEDINGS taken on behalf of Writers Guild at 8955 Beverly Boulevard, Los Angeles, California, commencing at 10:30 a.m., Monday, July 16, 1973, before Eileen R. Rosenthal, C.S.R., Notary Public.

BEFORE:

EMMET LAVERY, Chairman

CURTIS KENYON

ARNOLD PEYSER

GEORGE SEATON

JAMES WHITE

APPEARANCES:

FOR WRITERS GUILD:

MILTON ORMAN
3242 West Eighth Street
Suite 223
Los Angeles, California 90005

FOR RESPONDENT DAVID LEVINSON:

LOEB and LOEB
BY: ROBERT A. HOLTZMAN
One Wilshire Building
Los Angeles, California 90017

and

ROSENFELD, MEYER & SUSMAN
BY: ALLEN E. SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California 90212

I N D E X

	PAGE
Proceedings of Intraunion Disciplinary Hearing	4

W I T N E S S E S:

DAVID RINTELS

Examination by Mr. Orman	31

LIONEL SIEGEL

Examination by Mr. Orman	34
Examination by Mr. Holtzman	37
Examination by Mr. Susman	42
Examination Continued by Mr. Susman	47

ARNOLD SHANE

Examination by Mr. Susman	52
Examination by Mr. Orman	57

E X H I B I T S:

TRIAL COMMITTEE NO.	DESCRIPTION	
1	Charges and cover letter sent to Mr. Levinson, dated June 19, 1973	5
2	Letter granting continuance for postponement of hearing, dated June 28, 1973	5

GUILD COMMITTEE NO.		
1	Letter from Mr. Levinson to Mike Franklin, dated April 17, 1973	46
2	Work records	50
3	Credit records	50

MR. ORMAN: Mr. Chairman, for the record I guess you want to begin with my witnesses. I have two writer witnesses that aren't here as yet, and I don't know whether we should begin or not, but this is up to the Chairman and the Trial Committee.

MR. LAVERY: I'm in favor of saving time. I suppose, with consent, we could always take them out of turn.

How do Counsel for the respondent feel?

MR. HOLTZMAN: Mr. Lavery, I'm in favor of saving time, too. Let's proceed with the introductory matters including such motions as we are going to make. This may obviate the necessity of proceeding further. If not, we will see if we can proceed at that time.

MR. LAVERY: Let's open formally.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. vs. David Levinson.

The matter is being heard before a Trial Committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Inc.

The members of the Trial Committee are Curtis Kenyon; Arnold Peyser; George Seaton; myself as Chairman, Emmet Lavery; and Bob White.

Will the parties please state their appearances for the record.

MR. ORMAN: Milton Orman appearing on behalf of the Executive Director of the Guild.

MR. HOLTZMAN: Robert A. Holtzman on behalf of the

respondent and Allen Susman also here on behalf of the respondent. The respondent is not present in person.

MR. LAVERY: I have as Exhibit 1 a copy of the letter from the Guild to Mr. Levinson giving the official Notice of Disciplinary Hearing of Charges, including a formal hearing of the notice of charges dated June 19.

Is there any objection to this being received in evidence?

MR. HOLTZMAN: No objection.

MR. ORMAN: No objection.

MR. LAVERY: I also have dated June 28 a letter granting a continuance of postponement of hearing, which was scheduled for July 6.

Is there any objection to receiving that in evidence?

MR. ORMAN. No objection.

MR. HOLTZMAN: We have no objection, and I'll state for the record that Mr. Mendonsa has signed and returned a copy to me confirming the extension.

Will that be Exhibit 2?

MR. LAVERY: Yes.

(Whereupon, the documents referred to were marked Trial Committee's Exhibits No. 1 and 2, respectively, and received in evidence.)

MR. LAVERY: In advance of opening statements, which I assume will inevitably include some motions, the Chair would like to restate a principle which has been stated before.

In the interests of time and justice, we are trying to simplify the matter of motions since most of the motions are what the Chair calls usual motions dealing either with alleged imperfections in the pleadings, the jurisdiction of the Guild, the neutrality of the panel; so forth and so forth. The time consumed has run anywhere from nineteen minutes, which is a moderate low, to the all-time record of an hour and fifteen minutes. So, the Chair suggests just in passing that it would really expedite matters in fairness to all concerned if the motions -- the usual motions -- the familar motions were stated without argument; certainly without extended argument.

As to opening statements for the Guild, Mr. Orman?

MR. ORMAN: I have no opening statement at this time.

MR. LAVERY: For the respondent?

MR. HOLTZMAN: Mr. Chairman, I have no formal opening statement as such. With the permission of the Chairman, we request the opportunity to reserve an opening statement until the completion of the Guild's case.

We do have certain motions -- matters to address to these proceedings. I'm sympathetic with the Chairman's desire to save time, but I'm compelled to point out as I have in the past that substantive justice must be the result of a careful examination and the desirability of time-saving must not --

MR. LAVERY: Not to interrupt, may I suggest this for future panels that the fairest and most expeditious way is to file these motions in advance as is done in many

of the judicial courts. This allows the chairman, counsel, and the panel to be very familiar with the material and also provides for a very prompt ruling on the spot.

As I pointed out before, we are invested with implied powers, and we have the right and logic to suggest that motions can be filed in writing. If there can be exhibits filed in writing, why not motions?

MR. HOLTZMAN: I appreciate the Chairman's suggestion and will take this into consideration, if it should be necessary in the future.

Before we proceed, I should like to make certain objections.

In accordance with the Chairman's wishes, I will state our motions or objections and as much as the case may be, and I do not propose to argue them. I will state the motions fully; and in this connection, I do request that we may be permitted to adopt the arguments that I made in proceedings in the past and that Mr. Smith made in other proceedings of a similar character.

MR. LAVERY: Would you prefer each ruling be made on each motion as you make it?

MR. HOLTZMAN: Let me present the whole body of motions, rather than separate them.

May the argument in prior hearings be deemed to be incorporated in this record as though set out fully?

MR. LAVERY: Yes, sir.

MR. HOLTZMAN: By not repeating the arguments at length, I don't propose to give lesser effect to any motion or

ground of motion. We make each of them in sincerity and we believe each is applicable and fully dispositive of this proceeding.

Again, for the convenience of the record, I will number the motions as we have in the past and assign the same number to each motion that was previously assigned. Where there is an omission because the motion is not applicable to this proceeding I will so indicate.

The first group of motions, Mr. Chairman, is based upon the procedure which appears to be adopted in connection with this particular hearing. These motions in each case, in effect, demand that the Guild either proceed in accordance with its own Constitution and By-Laws or not proceed at all.

Our first motion, therefore, is to require the Guild and its Executive Director to present the charges in the form and in the manner required by the Constitution and By-Laws of the Guild as well as in the manner required by law. In this regard, the Constitution and By-Laws are very specific. They require the Guild to furnish the respondent with a copy of the charges against him as well as a copy of the Notice of Hearing. Article 10B, Section 1, provides that the charges may emanate from the Board or from any member. Section 5 gives the respondent a right to a copy of the charges and a copy of a Notice. Mr. Chairman, this wasn't done and it therefore deprives him of his constitutional right of confrontation.

What we have already in this record is what

the Guild member was furnished with. He was furnished with a letter of transmittal which on its face purports to enclose a Notice of Disciplinary Hearing and Charges. He was furnished with a document entitled "Notice of Disciplinary Hearing and Charges"; that is, Exhibit 1, Pages 1 and 2. The latter document purports to set forth a Notice that charges summarized therein have been made against Mr. Levinson. He is entitled to be furnished with a copy of the charges themselves, including the identity of the person preferring these charges. He has not been given these. The Guild is not proceeding with its Constitution and By-Laws. It's not proceeding in accordance with the elementary right of confrontation; and we, therefore, move that the proceedings be dismissed on that ground.

In that regard, I add further that the Labor Management Reporting and Disclosure Act -- ss: 411A5 -- requires presentation of written charges, not a summary of charges and not a notice of charges, but the charges themselves. We move to dismiss on that basis. That is, Motion Number 1, Mr. Chairman.

The motion that we previously asserted as Motion 1A is related. By this motion we move to dismiss the charges against Mr. Levinson on the ground that the Notice thereof is vague, uncertain, ambiguous and does not provide him with sufficient information on which to predicate a defense. In that regard, all he was told is that he has been charged with having crossed the Guild's picket lines at Universal Studios, Inc., during the month of April, 1973; more

particularly, on or about April 16 and April 30, 1973, without having informed the Guild in advance and, apparently, also having, during the months of April and May, 1973, rendered services for Universal Studios, Inc., at which time it was being struck. Mr. Levinson is not told whether the charges against him relate to the entire month of April or to the two particular days referred to in the charge. More pertinently, there is no indication in this Notice as to what services are being condemned.

Mr. Chairman, this is critical as we all know. He is not being told whether he is being sought to be disciplined because he performed his executive duties as a producer and we are not being told whether he is charged because he performed his services as a new material coordinator. We are not being told whether he is charged with having performed those services of a writing character which are in the subject matter jurisdiction of this Guild. The Constitution and By-Laws provide very specifically that the charges shall specify as succinctly and explicitly as possible the nature of the offense and the date and place of its occurrence; that is, Article 10B, Section 1. Section 101 of the Labor Management Reporting and Disclosure Act requires similar specificity.

What we have here is a charge which is ambiguous on its face with regard to the first paragraph and which may encompass wholly innocuous matters with which the Guild has no concern. With respect to the second specification, we are entitled to know what he has been charged with

in accordance with the standard of the Constitution and By-Laws. We submit he has not been afforded such procedural safeguards. And for these reasons, the proceedings should be dismissed. We so move.

Ground two of the motions is to dismiss the charges on the ground that the Guild has no jurisdiction to proceed against a member with respect to strike rules or regulations when that member had no voice or opportunity to participate in the decision-making process with regard to those strike rules and regulations. The records of this Guild indicate the fact, as we understand it to be, that Mr. Levinson is and has at all times been an associate member of the Guild; and has never achieved regular membership under the Guild's Constitution and By-Laws. He was not permitted to vote with respect to the strike or so-called strike rules; and, therefore, he is not subject to discipline thereunder. The effort to discipline him with respect to matters in which he had no area of choice deprives him of due process of law; deprives him of equal protection of the law under the Constitution of the United States and the State of California; and in view of this constitutional impediment, we move further to dismiss the charges.

MR. LAVERY: Mr. Holtzman, isn't there a section of the Guild Constitution that gives him the opportunity to be heard in a strike vote if a vote for a strike would adversely affect his employment situation; in other words, if he were working at the studio at the time the proceedings

were under way?

MR. HOLTZMAN: It is my understanding that the language of the Constitution and By-Laws generally prohibits an associate member from voting. There is a section which provides that a member, if the strike rules would directly affect his employment activities, is then to be permitted to vote.

Now, we do not know of any circumstances which indicate that he was extended this right as a practical matter.

MR. LAVERY: He has it under the Constitution.

MR. HOLTZMAN: Only if he were performing writing services at the time and, of course, he was not, because Mr. Levinson was a producer. I think this is a fact of common knowledge. He was the producer of the television series The Bold Ones at the time the strike rules were adopted and he was performing no services other than those at that time. He was not impaired in his activity as a producer and as I read the language of the Constitution; and, therefore, looking at the four corners of the Constitution, he was not a person entitled to vote on the adoption of the strike rules at that time.

So far we have had Motions 1, 1A and 2. Motion Number 3 is to require clarification of ambiguity in the charges. I've indicated already the area of ambiguity, whether we're talking about the entire month of April or two particular days in April or whether we're talking about writing services or any services of any character

whatsoever. It is our position that somebody coming before disciplinary boards such as this and subject to discipline of the enormity which this board apparently deems itself qualified to impose is entitled to know what he's being charged with without uncertainty or ambiguity, whether he is being charged with having performed writing services. producing services, executive services, labor management relation services or some combination of these.

This is critical, Mr. Chairman, because in the formal pleading and statement of position, which this Guild originally filed in the National Labor Relations Board proceedings presently under submission (Cases 31 CB 1203 -- 3 and #1 CB 1223 before the National Labor Relations Board of the United States), this Guild originally stated with respect to its threats of discipline against persons such as Mr. Levinson that they were, and I quote, "directed solely to dissuade members from crossing picket lines to perform writing work as defined in the recently expired Collective Bargaining Agreement with the Association."

I understand that efforts were subsequently made to amend this language which was placed before the National Labor Relations Board to acknowledge an effort to discipline people performing non-writing services as well, if they were Guild members in any classification. Court decisions since the time of the pleadings before the NLRB have sharpened the legal question which we now present. Indeed, in these cases the position taken by other labor unions throughout the country is that while the Guild

would or may have jurisdiction over a person's performing bargaining unit work, it would have no such jurisdiction over persons not performing bargaining unit work during a strike.

MR. LAVERY: How does that compare with the recent decision in the Circuit Court of San Francisco in the matter of the foreman that crossed the picket line? The jurisdiction is held for the union involved.

MR. HOLTZMAN: As I understand it, Mr. Chairman, and I have studied the opinion in this case including the board opinion which is much clearer on the facts, that case deals specifically with supervisors performing bargaining unit work during a strike. There's also a more recent decision by the United States Court of Appeals for the District of Columbia, again attempting to set up a distinction between supervisors performing bargaining unit work, as to which the courts appear in some instances to be finding jurisdiction, and supervisors performing other than bargaining unit work such as executive work, supervisory work, resolution of disputes with bargaining situations. In all the latter cases, the union was held to be without jurisdiction to impose jurisdiction.

MR. LAVERY: I didn't mean to interrupt your argument.

MR. HOLTZMAN: Obviously, Mr. Chairman, my objection goes directly to the point that you raise. We are entitled to be told whether discipline is sought to be imposed here because writing services were allegedly performed, or whether Mr. Levinson is charged with performing some type

of work other than bargaining unit work as, for example, his executive functions on behalf of the employer. The charges duck that question completely. He is deprived of due process of law; he is deprived of equal protection of the laws. We move to dismiss on that ground.

The next one is Motion Number 4, and I'll just run through this very quickly.

The Constitution and By-Laws make it eminently clear that the charges are required to be presented by the executive director of the Guild, Mr. Franklin. As the appearances already indicate, Mr. Franklin is not present and he is not the person presenting the charges on behalf of the Guild. Under Article 10B, Section 6, the respondent is entitled to this particular procedural protection. It relates, in essence, to his right of confrontation, a basic element of due process of law. We respectfully submit this is not a duty which can be delegated. The respondent is entitled to have Mr. Franklin present; and, because he is not performing his function, either the charges should be dismissed for failure of the executive director to appear or the proceedings should be suspended until such time as the Guild is able to proceed as its rules require.

Motion Number 5 -- and I'm turning to the substantive legal motions rather than those which are procedural in character, and by this, I don't mean to say these are any less important -- we move to dismiss the proceeding on the ground that the Guild has no jurisdiction

as a matter of law to impose discipline or to threaten to impose discipline on any member who is acting in the capacity of an executive, a supervisor, or a management representative, as these terms are used in the Labor Relations Law. We submit that it is a fact of common knowledge that Mr. Levinson is all three of these things and therefore it follows necessarily that the Guild has no legal power to impose discipline upon him or even to threaten to do so.

As I'm sure every member of this panel knows, Mr. Levinson is and has been employed in the capacity, during a portion of the period involved here, of producer of the television series The Bold Ones. More recently, his employment was changed as is again well known and now he is occupying a higher executive level. I believe he may be described as executive in charge of developing specific types of new material for television exhibition in the CBS television network. His duties both as a producer and in his new capacity include hiring and executive-type supervision of the work of writers; and resolving disputes, including the resolution of disputes with writers. In the classical sense, he is a management representative as well as an executive and a supervisor.

Under these circumstances, these facts being of such common knowledge in the industry and indeed to the members of the panel, we submit that the lack of power to proceed is apparent and the charges should be dismissed on this ground without anything further.

The Guild is trying to discourage Mr. Levin[illegible] from performing acts in a capacity and of a character beyond its power and beyond its reach. I'm not going to debate the decisions of the courts on the subject. I merely point out that these decisions are binding on the Guild as they would be binding upon any labor union.

The complaint which has been issued against the union, which has been described, and which is now presently submitted for decision before the National Labor Relations Board, discloses this very clearly. We suggest that by proceeding as it purports to do, the Guild is flouting the law and flouting the authority of the National Labor Relations Board.

Now, this Committee is occupying what is, in essence, a quasi-judicial position. It is not representing the Guild but rather is exercising an adjudicative power, and has the power to recognize its lack of legal capacity to proceed. We think it has the duty to do so and that it should proceed to dismiss these charges on this basis.

As Motion Number 6 and as a corollary of the last Motion, Number 5, I suggest the alternative possibility of simply postponing this proceeding until the National Labor Relations Board has acted with respect to the matter submitted for decision before it.

As Motion Number 7, I move to dismiss the proceeding on the ground that the Guild has no jurisdiction to discipline or to attempt to discipline persons who were acting in an area outside of the Guild's scope of authority

as a collective bargaining entity; that is to say, persons who were working in an area outside of the so-called bargaining unit. This is the matter which Mr. Lavery alluded to briefly a moment ago.

This Guild is the certified exclusive bargaining agent for writers, not for producers and not for new materials executives. If a man is working as a producer or as a general executive or as an administrator, the Guild has no power to interfere with his activities as such. The Guild does not have the power to stop a man or to attempt to stop a man from performing services outside of the scope of the bargaining unit itself. The law is as simple as that. Since Mr. Levinson's duties, as a matter of common knowledge, fall outside of the scope of writing as that term is used in the past and indeed in the present collective bargaining agreements, there would appear to be no question but that, as a matter of law, we are outside the scope of jurisdiction.

We submit that the Guild should recognize this and that the disciplinary committee should recognize this. We move to dismiss the charges on this further and separate basis.

MR. ORMAN: May I respond, Mr. Chairman?

MR. HOLTZMAN: I have a couple more. There are eleven or twelve. I think I can run through the balance of the motions much more quickly. By doing so, I don't mean to de-emphasize them.

I will now move to dismiss the proceeding.

MR. LAVERY: Is this Number 8?

MR. HOLTZMAN: This is Number 8, Sir, on the ground that the Committee, which has been convened to hear these charges, is not the committee contemplated by the Constitution and By-Laws of the Guild. By doing so, I do not intend -- and I want to make this very, very clear -- I do not intend to impune or in anyway to suggest that any member of this panel lacks independence or integrity or is in any respect unqualified to serve on a committee such as this. What I allude to here is the fact that the Guild has selected what might be deemed to be a blue-ribbon committee, not a committee composed of general members of the organization, but rather of persons who because of their past or, indeed, recent executive positions within the Guild, are its outstanding members -- persons who have been loyal advocates and servants of the Guild for many, many years and who because of this loyalty and their hard work on behalf of the organization have risen as a result of their efforts to their highest executive levels and whose lives are in effect eminently tied up with the success of the Guild as an organization.

Now, such persons necessarily have a subconscious unavoidable predilection toward the Guild's side in this controversy. It's inevitable; it's inherent. Now, you gentlemen know you have devoted a substantial amount of time to this organization. You have served it with honor. You have occupied and have long been associated with its highest executive levels and you must recognize that this close association necessarily and unconsciously is going to cause

you to favor the Guild or perhaps to bend over backwards, and neither posture is fair. Now, the Guild recognized this when it adopted Article 10B, Section 4, of the Constitution. It requires this committee to be composed of members none of whom is interested in the proceeding other than as a Guild member.

I respectfully submit with all due respect to each of the distinguished members of this Committee that the Committee is not so constituted and I respectfully move that the proceeding be dismissed on the ground that Article 10B, Section 4, has not been complied with.

I will also respectfully move to dismiss the proceeding -- this is the one we had previously numbered 11 -- I'm skipping Number 10 -- to dismiss the proceeding or in the alternative to postpone it because of the very recent conclusion of the Writers Guild strike. Again, it's a fact of common knowledge that the strike against the producers has been generally over only for a very few weeks. The remainder of the strike against the television companies and broadcasters concluded only within the last week. Indeed, I do not know whether, as a consequence of the vote taken during the past week, the mechanics of disposing of the strike have been completed as I stand here today.

In any event, we are so close to the period of the strike with its inflamatory publicity and with its highly charged emotional atmosphere that at this time we submit it is still impossible to proceed with a matter

such as this in a calm and judicious manner. I believe the decisions recently announced and widely publicized with respect to certain other persons who are subjected to such discipline, and particularly the enormity of the fines which have been assessed against these members, tend to point up what I am saying. We are not at a point in time when matters such as this can be dealt with dispassionately.

I recognize you gentlemen are going to try to do your utmost to be fair, but you cannot escape the atmosphere in which we are conducting proceedings at this time; and, therefore, I respectfully move in the alternative that the charges be dismissed or that this hearing be continued to a point in time at which such matters can be viewed free of the type of emotion to which I have adverted.

Mr. Chairman, those are the motions and the basic grounds therefor. I have not argued them. I respectfully submit that each and all are sufficient to compel the dismissal of this proceeding or in the alternative that it be postponed to a period of greater calm, and we respectfully submit each of these motions for decision at this time.

MR. LAVERY: Thank you, Mr. Holtzman, and before Mr. Orman replies, the Chair and the Committee would like to thank you for being able to condense these motions in practically 30 minutes flat. I think you've done justice to the motions even under the restricted quality at the time.

Mr. Orman?

MR. ORMAN: Thank you, Mr. Lavery.

As regards Counsel's first motion, he says the charges do not follow the requirements of the Guild's Constitution; that is, they do not follow procedures set forth. However, Counsel is assuming a fact that is no longer true. We agree that in the past, as in the case of Mr. Ruddy, the charges may not have been specifically as set forth in the Guild's Constitution. However, if Counsel will look at these charges, he will find they are drawn up exactly as required by the Guild's Constitution. They are distinct and different from previous charges, so he's wrong about that.

He says the charge is vague and non-specific and therefore a denial of due process because Mr. Levinson doesn't know what he is called upon to meet. Yet, the charge very specifically says "Notice is hereby given that you are charged with violation of the Guild's Strike Orders and Sections 1, 12, and 13 of the Rules for the Conduct of Members During a Strike, dated November 20, 1973, as amended May 1, 1973; copies of which are attached hereto." Well, I will now read Sections 1, 12 and 13.

Section 1:

> "Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct

prejudicial to the welfare of the Guild."

Reading from Section 12 of which he is also charged, it specifically points out:

"All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer."

Strike Rule 13:

"Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature of documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the

foregoing, he should inform the Guild in advance the nature of such prospective visit."

I do not know how you can be more precise than that.

Counsel also said the executive director must present these charges to the Trial Committee. He has implied that contention -- I am not sure -- partly in point one and he repeats it somewhere around point four or five. Some of his motions are repetitious. To state the obvious that has been said many times before, obviously any provision calls by implication for delegation of duties. What if the executive director were sick or what if he were dead or what if he had resigned or what if he had been on vacation or what if he had absconded with the Guild's monies and could not be found, does this mean that the Guild cannot perform its functions? Of course not. Everybody realizes that delegation -- proper delegation -- of authority is proper. Counsel's motions, like 2 and 3, are essentially repetitious and I cannot follow him. He says Mr. Levinson was not told what he is supposed to do and the strike rules say do not cross a picket line.

Counsel's next motion was that Mr. Levinson did not participate in the strike rules because, I guess, he is not what they call a current member; and, therefore, you cannot enforce such rules which he did not vote for. Well, let us take it to its logical conclusion. Assume this hypothetical situation: Assume that Mr. Levinson or any other writer previous to the strike had violated

another provision of the Guild's rules and therefore he had been put on suspension by the Guild for such other violation. Any member on suspension may not vote, so that Mr. Levinson or any other writer when the time came to vote on the strike would not have been permitted to vote.

Counsel seems to think that therefore this excuses him. In essence, Counsel is saying two wrongs would make a right. There is no constitutional rule in the national sense, state sense or Guild sense which says that a rule is not effective against a person unless he votes for it. Many people under the age of, say, 18 or 21 in other states do not vote for certain rules, but they, of course, must obey them.

As I have said, several of these motions are repetitious. I will skip to the one that Counsel emphasizes; NLRB is now perhaps asserting jurisdiction over this matter. I'm not sure what stage this is in. It is my understanding that only a complaint has been filed and may have been heard by an administrative judge at the present moment. Is that correct, Counsel?

MR. HOLTZMAN: The present matter has been tried and is submitted for decision by him.

MR. ORMAN: There are, of course, many stages. First of all, we do not know what particular facts are being litigated there so, therefore, this Trial Committee cannot limit its jurisdiction on that basis. Of course, we all know it goes to NLRB; then it would go to Nine Circuit or the Supreme Court. But it is not unusual for the general

counsel to issue a complaint, not because he thinks there has been an actual violation but because a novel question has been presented and therefore he purposely issues the complaint so that it may be litigated so it may then go to the court. It may then get a definitive answer from the Supreme Court.

This also brings out several subsidiary points which Counsel has made in several different motions which is that Mr. Levinson was not doing writing duties and therefore this Trial Committee and also the Guild does not have jurisdiction over him. I submit he is evading the question. We do not know what are "writing duties." We do not have before us the definition of what are writing duties. We have not before us what is a writer, and what are writing duties for the NLRB may be separate and distinctive from what may be writing duties for this Committee.

If Mr. Levinson were in his office and if he were talking to a director and he told the director, "Let's cut out that scene," or "Let's add that scene," or "Let's change the end of the picture," or "Let's have this type of dialogue," I submit that this would probably be considered the equivalent of writing; and I think the members of this Trial Committee would think this is equivalent of writing. This is the reason the strike rules took jurisdiction over what Counsel calls producers or non-members of this Guild. We are assuming facts not in evidence. The presumption is that Mr. Levinson is a member of this Guild and that in his capacity he is

perfectly capable of doing "writing duties."

I suppose that I should discuss the fact that Counsel brought up that this is not an industry committee made up of Mr. Levinson's peers. Counsel wants it both ways. First, he charges that this Trial Committee and the charges do not specifically follow the Constitution of the Guild. Now, he wants to put in a provision that is not in the Constitution of the Guild. There is nothing in the Constitution of the Guild about who should constitute the members of the Trial Committee, and it seems that the Board of Directors has a perfect right to appoint who they want. The only exception, of course, are those members who have an interest. Well, this needs a reasonable interpretation. Everybody knows what it means: Somebody who doesn't have a direct financial, economic or artistic interest in the picture -- some very specific interest. It does not mean because the present Trial Committee is made up of eminent members of the Guild.

Probably his last motion was that this hearing follows too closely after the end of the strike and therefore is a violation perhaps of due process of law. Well, another part of due process of law is that justice postponed is justice denied. Counsel assumes that this Trial Committee cannot divorce its mind from the emotion of the strike and render a fair decision. I submit that this Trial Committe is able to do that.

MR. HOLTZMAN: Mr. Chairman, may I respond briefly?

MR. LAVERY: Then, the Committee will take a

brief recess.

MR. HOLTZMAN: I'm very interested in Mr. Orman's point concerning the specificity of the charges. Just to make sure the point of our motion in that regard is clear, this thing that was served upon Mr. Levinson, Exhibit 1, Page 2, is not "charges." On its face, this is a Notice of Disciplinary Hearing and Charges. It is a summary of charges. It's a summary in one brief paragraph of charges which apparently have been made by some unnamed Guild member or witness in legal language without any specification as to what the man has been seen to have done or alleged to have done. It's very interesting that Counsel endeavors to have us believe that this complies with the requirement of specificity. In that regard, he says to take a look at Sections 12 and 13 and he reads Sections 12 and 13. The sections he read from are not out of the Constitution. They're out of the Strike Rules. Thirteen prohibits a member from entering the premises of a struck producer for specific purposes: the purpose of discussion of the sale of material or contract of employment or viewing of film.

Now, Mr. Levinson is charged with having violated Section 13. Is he charged with having crossed the picket line for the purpose of discussing the sale of material? Is he charged with having discussed a contract? Is he charged with having viewed a film or is he charged with entering the premises for some reason entirely not contemplated by the three subdivisions of Rule 13? My point

is that he is entitled to notice of this as specifically as the English language will permit. That's what your own Constitution and By-Laws says and these requirements have not been served.

Counsel states that there is no rule of law which says that the Guild cannot punish a member for violating a rule that he did not vote for. Again, this is not our point. The point is that the law does preclude a labor union -- and this Guild is a labor union -- from punishing a member for violating strike rules affecting him when he does not have the power or the right to vote on these strike rules.

If Counsel needs a citation on it, the citation is as to the Labor Management Reporting and Disclosure Act, and to the various court decisions which have come down under it. I would be pleased to cite specific case citations if the Chairman or Counsel desires them.

Counsel says he does not know what is being tried by the NLRB or the status of the case being tried. I respectfully submit that the trial recently concluded is a matter of great importance. If Counsel is not aware of its ramifications, certainly the Guild and Mr. Mendonsa, its resident counsel who appeared on behalf of the Guild, and the directors and executive director are intimately aware of the charges; and I submit the charges; that is, the conducting of these particular disciplinary proceedings in an effort to discipline persons who were executives, supervisors, management representatives and persons employed

in areas outside of the scope of the bargaining unit, are directly applicable to the Guild's power to proceed with these disciplinary proceedings today.

One last point of importance. Counsel stated that because Mr. Levinson is an associate member of the Guild capable of doing writing duties, some sort of presumption is being indulged in; that, when he was allegedly at work during April and May, he was performing writing duties. As far as we are concerned, it is up to the Guild's Counsel to prove each and every element of the charges including those elements which are implied therein. If it is alleged that Mr. Levinson was performing writing duties during the strike, it is up to Counsel to prove he was doing so. If he was alleged to have crossed the picket line for the purpose of doing such duties, that purpose must be proved, as well as the physical fact that he crossed the picket line, if such be the fact. We are not going to presume that there was a breach or violation of the strike rules or the Constitution. We are here to have that proved.

Now, we say that it's a fact of common knowledge that he was not doing these things. If the Committee declines to accept this and wishes to hear evidence, it is our strong belief that the evidence on that issue must come first and convincingly from the Guild's Counsel and should not be supplied by some sort of presumption.

If the Committee has any questions, I would be pleased to answer them. We are prepared to.

MR. LAVERY: Let's take our recess now.

(A brief recess was taken.)

MR. LAVERY: To resume after due consideration, of all the motions made by Counsel for the respondent, the motions are denied.

MR. ORMAN: I am ready to call my first witness, Mr. Chairman.

My first witness is David Rintels.

DAVID RINTELS,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q Mr. Rintels, would you give and spell your name for the record, please.

A David Rintels, R-i-n-t-e-l-s.

Q Mr. Rintels, are you a member of the Writers Guild?

A Yes.

Q How long have you been a member?

A I've been a member of the Writers Guild, East, beginning in 1962 and a member of Writers Guild, West, since 1967.

Q During the recent Guild strike, did you perform picket duty?

A Yes.

Q Would you tell us where it was.

A At Universal Studios.

Q Can you tell us what hours you were there? Did you have a specific time?

A No. I was on the Board and the Board did not have regular picket duties. We just did occasional picketing whenever the spirit moved us or there was a request for additional pickets.

Q You picketed on April 16, 1973?

A Yes.

Q Tell us where you picketed.

A At the main gate at Universal Studios.

Q Can you tell us what hours you picketed on that date?

A From 7 in the morning 'til 10 in the morning.

Q Did you see the respondent, David Levinson, that date?

A Yes.

Q Could you tell us where you saw him?

A I saw him driving into the studio in the main gate.

Q Can you tell us what time that was?

A 8:45 in the morning.

Q Can you tell us how you knew it was Mr. Levinson?

A Well, I've known David Levinson for several years. I've worked with him and I recognized him. I know his car and he spoke to me.

Q What kind of car was he driving that morning?

A A blue two-seat Mercedes.

Q When he spoke to you, how close were you to him?

A Six or eight feet.

Q Had he stopped his car or --

A Yes.

Q He came to the main gate and stopped his car?

A Well, there is a driveway into the main gate and the picket line was across the front of the driveway; and as he made the right turn off I think it's Lankershim into the studio, that's where the picket line **is and that's where** he stopped for just a moment.

Q Do you know if he knew you?

A Yes.

Q Who initiated the conversation -- he or you?

A There were only three words said in the conversation. It was all his -- no, I take it back. There was six words. He said, "Right up front," and I said, "I see you." And that was the whole conversation.

Q Were you carrying a picket sign at the time?

A Yes.

Q When he said, "Right up front," did it mean anything to you what he was trying to impart to you?

A What I thought he meant was that he was saying that he was doing this right up front where everybody could see it; that he wasn't doing it behind anybody's back or going into a side gate. That's what I took it to mean.

Q Did he proceed to the studio?

A Yes.

Q Did you see him thereafter?

A No. You mean on that day?

Q On that day.

A No.

Q Did you see him thereafter on any other day?

A That was the last day I was on picket duty at Universal. I think I've seen him in other circumstances but nothing connected with the strike.

Q These six words were the total of the conversation?

A Yes.

Q "Right up front" by him and "I see you" by you?

A Yes.

MR. ORMAN: I have no further questions of this witness.

MR. HOLTZMAN: No questions, Mr. Chairman.

MR. LAVERY: Do any of the members have any questions?

(The response of the Committee was negative.)

MR. LAVERY: The witness is excused.

MR. ORMAN: My second witness is Lionel Siegel.

LIONEL SIEGEL,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q Mr. Siegel, will you give and spell your name for the record, please.

A Lionel Siegel, L-i-o-n-e-l, S-i-e-g-e-l.

Q You are a member of the Writers Guild?

A Yes.

Q Would you tell us how long you have been a member of the Writers Guild.

A Thirteen years.

Q During the strike, did you perform picket duties?

A Yes, and also as a strike captain.

Q Would you tell us where you performed those picket duties and served as a captain.

A At Universal Studios.

Q Were you on duty on April 30, 1973?

A Yes, I was.

Q Tell us what hours you were on duty that morning.

A Shortly before 9:00 -- 8:45 in the morning until about 10:00.

Q Tell us what your duties were that morning.

A Checking in the pickets, seeing who was there and who wasn't there, making sure they had signs; things like that.

Q Did you see the respondent, David Levinson, that morning?

A Yes, I did.

Q Can you tell us where you saw him?

A As he drove onto the main lot at Universal.

Q Tell us what time that was.

A About 9:30 -- 9:35 in the morning.

Q Will you tell us where you were at that particular

time.

A At the driveway gate.

Q Can you tell us how you knew it was Mr. Levinson?

A I had worked for him most of the previous years as a story editor on The Bold Ones which he produced.

Q Did you notice what car he was driving that morning?

A Blue Mercedes, two-door.

Q Did he see you as far as you know?

A Yes.

Q Did either one of you speak to the other?

A Yeah, he spoke.

Q Tell us what he said or you said.

A In general, he said something to the effect that this is what he felt was right to do and that he wasn't being sneaky about it or something like that.

Q That was the substance of his conversation?

A Yes.

Q He spoke directly to you?

A Right.

Q Was that in something that you said or did he volunteer this information?

A No, I was surprised to see him drive in. I had heard he had been driving on before but I'd never seen him do it, so I guess I looked a little surprised to see him and what he said was, I guess, in answer to my look of surprise that he was crossing the line.

Q That was the substance of the conversation?

A Yeah, I said something -- "Well, I guess you have to do what you have to do."

Q Did you see him any more that day?

A No.

Q Do you know where he went on the lot?

A No, I didn't look to see where he drove on -- only that he entered the gate.

MR. ORMAN: I have no further questions of this witness.

MR. LAVERY: Mr. Holtzman?

EXAMINATION

BY MR. HOLTZMAN:

Q Mr. Siegel, where did you say you saw him in relation to the gate at the time of the incident you just described?

A Well, the drive-in entrance at Universal is on the east side of Lankershim. I was standing on the northeast corner of that drive-in gate. David Levinson approached the gate from the freeway and made a right turn onto the lot.

Q Were you standing on the sidewalk?

A Yes, right on the corner -- right on the northeast corner of the driveway.

Q About how far from the paved portion of the street were you standing?

A A foot.

Q Was there anyone standing with you?

A Other pickets.

Q Approximately how many pickets were there at that

location at that time?

A Six or seven I'd say.

Q Were they all standing on the sidewalk in the area you were standing?

A Some were and some were across the driveway on the other side -- the other side of the driveway.

Q Was there anyone moving back and forth in the paved area of the street at that time?

A I'm not sure. I don't recall.

Q Were you carrying a sign?

A No. As a strike captain I didn't have to do that.

Q To your knowledge, were any other pickets displaying signs at that time and place?

A They all were.

Q Except you?

A Right.

Q You say you were story editor on The Bold Ones?

A Uh-huh.

Q During what period were you so employed?

A April 1, '72 to December 5, '72.

Q Would you describe for us just briefly what your duties were as story editor on The Bold Ones.

A Working with writers who came in with story ideas, fixing those written story ideas to meet the network demands, reading all the drafts of the scripts and story outlines; rewriting as deemed necessary by the producer, David Levinson, or the network.

Q Just so we have a record on this, The Bold Ones

is an ongoing television series; is that correct?

A You mean as of now?

Q Why don't you tell me what it was as of 1972 and the first part of 1973?

A Well, the series as of now is cancelled. It was cancelled late November, '72 -- that is it was announced it would be cancelled; it wouldn't be picked up. Production was completed by January, '73. Does that answer?

Q No. Up to the time production ceased in January of 1973, this television series consisted of one-hour broadcast programs each week; is that correct?

A Yes.

Q Am I correct in understanding that there were two or three ongoing --

A Segments.

Q -- segments in production; that is to say, with the same cast and same general fact background.

A Two or three ongoing when?

Q Let's say January, 1972, to January, 1973.

A No. By December when I left, there were only two more segments to do. This was early in September, '72. By the end of January, '73, those two segments had been filmed and were what they call "in post production."

Q Up to then, there was a continuing cast of characters for the series; is that correct?

A Yes.

Q This continuing cast of characters operated on the same basic factual context each week; is that right?

A Right.

Q How was writing then for this series? Was it done by a continuing staff of writers or independent writers or some combination of these? Please explain how the writing took place.

A It essentially was done by free-lance writers; that is, different writers for each segment. There were three exceptions, I think, where one writer did more in one segment. Once the material was completed by any one writer -- that is once a second draft was polished-- then I or sometimes David Levinson would rewrite, polish; change those scripts prior to production per the needs of the director who was assigned to it or perhaps the network or Levinson's wish for changes.

Q Your function was that of the story writer or story editor; that is, the person who coordinated this process to make sure that the script submitted conformed to the ongoing story line; is that correct?

A Right.

Q Who hired the writers?

A David Levinson.

Q In case of any dispute between the production company and the writer, who was responsible for relations with the writer so hired?

A David Levinson.

Q In your story editor capacity, to whom did you report?

A David Levinson.

Q To whom did the reporters as they were preparing scripts report?

A You mean writers?

Q The writers, yes.

A They delivered their various drafts of stories or scripts to me or to them.

Q At the time you terminated your relationship with this production company in December, was there any writing going on for the remaining segments or had the writing been completed?

A Yes, the writing was going on in those two remaining episodes; one of which -- both of which were to be pilots -- spinoff pilots.

Q In all other respects, writing for the series had been completed?

A Right.

Q Had writers already been engaged to work on these two segments that you referred to?

A Yes.

Q I take it they were doing the writing?

A Yes.

Q I take it you have had no contact of a business character with Mr. Levinson since you terminated your relationship in December of 1972; is that correct?

A Correct.

MR. SUSMAN: I would like to ask you a question, too.

/ / /

EXAMINATION

BY MR. SUSMAN:

Q I notice on Mr. Levinson's work record maintained at the Guild that it shows two polishes on the segments of The Bold Ones done in July or rather credit given as of July 19, 1972, and on another segment on August 14, 1972. Are those the two polishes to which you refer to which Mr. Levinson did a polish?

A Yes.

MR. SUSMAN: No further questions.

MR. HOLTZMAN: No further questions.

MR. LAVERY: Just one question from the Chair.

Is that work record in evidence?

MR. ORMAN: No, it's next here, Mr. Chairman. I was following the procedure.

MR. LAVERY: Are there any questions from the members?

MR. KENYON: I have one question and I think it might be helpful if you would explain in a little more detail your relationship with David Levinson in terms of your duties as story editor.

When you consulted with him on a script, what specifically did he contribute? What was your work relationship insofar as the writing was concerned?

THE WITNESS: Well, he called the shots; that is to say, it was -- he reacted to the script very specifically and told me either what he wished me to do and/or what he wished the writer of the script to do. On lots of scripts the kind of -- it was necessary to rewrite to make

the leading characters and their dialogues consistent with what he had done for the past. We would discuss it thoroughly and he would be very specific about what it was he wanted changed. I would then do it or instruct the writer to do it. I would make suggestions, some of which would be accepted; some not. Essentially, he was as a producer deciding very specifically what he wanted the scripts to be.

MR. KENYON: Just one more question if you don't mind, Mr. Chairman.

You mentioned in your earlier testimony that on occasion Mr. Levinson wrote portions of the script himself. Would you elaborate on that a little bit.

THE WITNESS: Although we started in April, which would be enough time to prepare scripts, as usually happens when it came time for production we were behind and sort of under the gun -- the pressure of production -- and we remained that way practically until November. As a result, when there was **extensive** rewriting to do either on the story or the script -- more often the script -- on quite a few of the scripts -- he would take certain scenes and rewrite them and I would take others and rewrite them so we would share that responsibility. In addition to the two that I was asked about that he did polishes on or his work record shows he did in July and that other date, there were quite a few others that he did enough work on probably to get credit but he elected not to put in for credit.

MR. PEYSER: Lionel, you would say then that David Levinson was not a producer purely in terms of a guy just being concerned about what was going on at the back lot but that he indeed was a producer-writer?

THE WITNESS: In my opinion, yes -- I mean David Levinson is a very bright and a very thorough and hard-working guy and he's a very fast writer; also he did a lot of what I would call polishing and rewriting. As an example, I wrote one script on the series and we had an argument about the last scene -- the way it should end -- and we didn't agree at all. What it got down to was him telling me that if I didn't do it, he'd do it; that is, change the ending, and I knew that he would and I preferred to do it myself which I did. But, as producers go, he was -- I think he's a complete producer not only in regard to writing but also supervising dubbing, music; everything, really. He's quite thorough.

MR. LAVERY: I think Mr. Seaton has a question.

MR. SEATON: One question: Do you have any idea or do we have a writer's credit director here -- 2/73, "If I Had a Million" prologue writer? Do you have any idea of the extent of the prologue? Exactly what would the prologue be for "If I Had a Million"? Is that the old Paramount picture?

THE WITNESS: Yeah, MCA got the rights. They were designing a TV series based on that and Levinson would be producer on that. He wrote the prologue, I believe. How extensive was it? It's a few pages. It's also inherently

the format.

MR. SEATON: We had pickets at Universal from March 6 right straight through even though, of course, there were a few days when they were called off. May I ask, Mr. Orman, have we any reports from other pickets from March 6 to April 16 that this man crossed the picket line?

MR. ORMAN: My only evidence regards these two dates.

MR. SEATON: So, all we know for a fact then is he only entered the studio and went through the picket line on these two dates, April 16 and April 30?

MR. ORMAN: In answer to your question, I have here a letter which evidently comes from Mr. Levinson which I would like to get into evidence later on by stipulation of opposed counsel. It's a letter from Mr. Levinson to Mike Franklin.

MR. HOLTZMAN: Mr. Chairman, I would object to this letter being read until Counsel have had an opportunity to examine it and determine whether it would be admissible.

MR. LAVERY: The letter will show --

MR. ORMAN: This will answer your objection if we can be permitted to put it in evidence.

I understand there is not going to be any objection to --

MR. HOLTZMAN: Mr. Chairman, we have no objection to this document going into evidence.

MR. ORMAN: I think, Mr. Seaton, the implication of this letter would answer your question. The document speaks for itself.

MR. HOLTZMAN: This will be Exhibit 3?

MR. ORMAN: This will be Guild's Exhibit No. 1.

MR. SEATON: I see this letter is dated April 17. Now we have no knowledge that before he wrote this letter he did not observe the strike rules of the Guild, right?

MR. ORMAN: Yes. The former witness, Mr. Rintels, said the day before this, April 16, he was seen passing and I think a logical implication is that Mr. Levinson feels he was doing it right up front as he said and thereafter wrote this letter to the said director to set forth on the record his position.

MR. SEATON: I can't interpret that letter in this light. Do we have any of the cards where he was called and asked to picket and he refused?

MR. ORMAN: Not in my file. The only evidence is what has been presented.

MR. SEATON: Isn't it practice that everybody was called and told,"We place you on picket duty on the red squad from 7 to 9"? In every other case, we've had these records.

MR. HOLTZMAN: Mr. Chairman, may I respectfully inquire into the purpose of this dialogue. Mr. Levinson is not being charged with having failed to refuse to report to picket duty and there's been no suggestion that any of the subject matter would be aborted to a misproceeding.

MR. SEATON: I'm only trying to clarify one point; that is, we only have positive evidence he went through the picket line April 13th and 30th. I'm trying to find

out if we notified him prior to April 16 that he was due for picket duty.

MR. PEYSER: Or whether he showed up.

MR. ORMAN: I do not know but, in this case, I will agree with opposing counsel that he is only to meet on specific charges in our Notice of Charges which is the crossing of the picket line on two separate dates and this is the only thing he is charged with. Whether or not he has done anything more, I do not know but I agree it is before this Trial Committee at the present time.

MR. SEATON: We have no evidence to say that he was asked to picket, have we?

MR. ORMAN: That's right, not on the record.

MR. SEATON: That is all.

MR. LAVERY: Mr. Orman, would you like to proceed?

MR. SUSMAN: I would like to ask some more questions of the witness if the Committee is through questioning him.

EXAMINATION CONTINUED

BY MR. SUSMAN:

Q Mr. Siegel, I want to get the time sequence clear with regard to any writing services performed by Mr. Levinson of which you have any knowledge. You left the show on December 5, 1972?

A Approximately, yes.

Q Production was completed in January of 1973; is that right?

A By the end of January, yes.

Q So, I take it it's a fair conclusion that knowing as we do what the production function entails, that any writing that Mr. Levinson did was prior to your departure; certainly as far as any knowledge on your part?

A Yes, but I know that he was very closely involved with the spinoffs on The Bold Ones; and if I had to, I must presume, because I know the way he worked, he would have been involved in making script changes up until the last day of shooting on both of those -- I mean which would have been completed certainly January of '73.

Q But, you didn't actually see him do any writing after December, 1972?

A No, of course not.

Q I would like to get into focus the way these Guild work records are maintained. There is a reference to his doing the prologue on "If I Had a Million" in February of 1973. Now, actually the writing he did on that was done before you left; isn't that so?

A Yes.

Q I assume it was done before you left in December?

A Yes.

Q Therefore, the reference in February is the reference to credit, not the time of actual writing?

A Yes.

Q That same thing is applicable to the two polishes which reference was made by me earlier, right?

A Prior, right.

Q With regard to comments about the script, the

writing and so on that you attributed to Mr. Levinson, you've been around the studios for a while I presume; have you not?

A Yes.

Q In connection with the production function, it's true that comments and ideas and points of view regarding scripts of productions, whether they be television or features done by the studios,take in the whole gamut of the studio executive level including the head of the studio in many instances; isn't that right?

A Right.

Q There are various categories below that like the head of television production or the head of feature production at a given studio?

A Yes.

Q And that was also true at Universal, was it not?

A Yes. Levinson's changes represented what he wished and what those above him at Universal wished plus the network. All three, yes.

Q What I'm trying to get at are ideas and comments of thoughts or improvements and changes in scripts are not only limited to the producer but also they take in the president of the company in many instances --

A Yes, right.

Q -- and various eschelons along the way?

A Right.

MR. SUSMAN: Thank you.

MR. LAVERY: Are there any other questions?

MR. ORMAN: I have no redirect.

MR. LAVERY: Do you want to proceed with some things?

MR. ORAMN: Yes. I just want to propose my stipulation be entered into evidence as to these member's work records and I'm not sure what we should call the other side but let's just merely call it the writer's credit records. I propose to enter by stipulation as Guild's Exhibit No. 2 the work records of both sides of it and as Guild's No. 3 the writer's credit records.

MR. LAVERY: No objection?

MR. HOLTZMAN: We will stipulate these are records maintained in the ordinary course of the Guild and may be admitted into evidence.

MR. LAVERY: So ordered.

MR. ORAMN: The Guild rests its case.

MR. HOLTZMAN: Mr. Chairman, at the conclusion of the Guild's case, we will respectfully move to dismiss this proceeding on the ground that the Guild has failed to prove a violation of any disciplinary rule or violation to which the Guild has jurisdiction; the rules made on each and all of the grounds that I have previously asserted at the beginning of this hearing and particularly on the ground that there has been no direct evidence of any character as to what Mr. Levinson did or even as he was suspected to have done on the two occasions when he crossed the picket line in April of 1973. The only direct evidence as to the nature of his activities during the year 1972 proves conclusively that he acted at that time in the

ARNOLD SHANE,

called as a witness on behalf of the Respondent, testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q Mr. Shane, would you state your full name for the record, please.

A Arnold Shane.

Q S-h-a-n-e?

A Yes.

Q Are you employed by Universal Studios?

A Yes, I am.

Q How long have you been so employed?

A For six and a half years.

Q Have you known David Levinson?

A Yes.

Q You know his employment history at Universal?

A Yes, I do for approximately eight or nine years.

Q Before we get into that, will you state the nature of your duties at Universal.

A Well, my primary function is in the area of business affairs and negotiations dealing with television networks, people in the creative area, hiring producers, writers, directors and sometimes dealing with literary property.

Q Turning to Mr. Levinson, has he been a producer

at Universal for approximately seven years prior to April, 1973?

A Yes.

Q In most recent years, which series has he been a producer of?

A The past year he was producer of The Bold Ones and the past year the show consisted solely of The Doctors episodes.

Q Was there any executive director assigned to that series?

A No, there was not. It was solely his function to be responsible for everything dealing with getting his show produced.

Q Again, for the record and just by the fact that the people here are acquainted with the process, will you state simply and concisely the nature of a producer's activities in connection with The Bold Ones series?

A Well, the producer is, in substance, a supervisor of all the functions of producing the show from the hiring of the writers to getting the scripts done and working with the writers to make sure that the scripts comply with what the producer and the company and the network desire to go on the air; the hiring and directing of any of the other people involved in the production, whether it be the directors, the actors, the below-the-line personnel; selection of sets and locations; supervising post-production areas; the editing and scoring and dubbing of a picture; and the actual control of the delivery of the pictures

from beginning to air date.

Q Is part of his duties the resolution of disputes with employees assigned to the production?

A Yes.

Q In connection with that activity, does he speak with the voice of management?

A Yes, he does.

Q Putting it very simply, I take it he can hire and fire people working for that series?

A Yes.

Q And, in fact, he did?

A Yes.

Q The writers' strike began as testimony indicated here about March 6, 1973; and when the strike began, was Mr. Levinson on vacation?

A Yes, he was. That was the normal vacation date for most of the producers on the lot.

Q The given date on which his vacation was supposed to end was what date?

A I believe it was a week or two later. I have a note here if I can look at it -- March 16, 1973.

Q Did he report immediately following March 16, 1973, to the studio?

A No, he did not.

Q What happened in that regard?

A He stayed out because of the strike for approximately four weeks.

Q Prior to his return to the studio, was his

employment function changed?

A Yes, it was. It was decided that instead of Mr. Levinson functioning as a producer, he would move into an executive area and would be in charge of the development of new programing for the CBS network for the company.

Q Was that a promotion to a managerial level above that he had previously held?

A Yes.

Q That began on or about April 16, 1973?

A That's correct.

Q With respect to his involvement as the liaison between the company and CBS, what was the nature of his duties?

A Well, during the strike it was just a matter of discussing with the CBS executives the status of some projects that had already been in work prior to the strike and having general suggestions as to what the project should be. Since the strike, of course, it's been a matter of contacting writers and hiring them to develop the script.

Q Did Mr. Levinson perform any writing functions whatsoever during the writing strike?

A No, he didn't perform any writing services during the strike nor has he performed any since the strike.

Q I would just like to dwell for a minute again into the nature of his duties in his new job. Is he the person primarily responsible for the entire CBS-MCA relationship with regard to television projects at the studio?

A Well, no. There is an executive by the name of

Tom Tannenbaum who he works with. Mr. Tannenbaum is our vice-president who handles the overall relationship with CBS. Mr. Levinson's functions are limited more or less to developing new projects for pilots -- contemplating television series to get on the air.

Q In that particular area in which he operates vis-a-vis CBS, he has the primary responsibility?

A Yes, he does.

Q You mentioned that he would ordinarily have stayed out until the end of his vacation which was March 16, 1973, before reporting back to work. I take it that the studio did not call him back until March 16, 1973; is that correct?

A I believe that's correct, yes.

Q At that time he was directed by the studio to return to undertake his new activities?

A Yes.

Q And, he did, in fact, do so?

A Yes, he did on April 16.

MR. SUSMAN: No further questions.

MR. LAVERY: Are you finished?

MR. SUSMAN: I have no further questions.

MR. SEATON: Mr. Shane, you stated that on April 16 he went into the managerial area and yet his letter of April 17 says, "I feel that I have no alternative but to report to work for Universal in order to honor my contract as a producer." So, did he return as a producer or did he return --

THE WITNESS: Well, he does have a written contract -- actually, it's rather broad. It's a typical company hyphenate contract which does include production services among other things. However, prior to April 16, it had been decided that he would be functioning as an executive.

MR. KENYON: Did Universal negotiate a new contract with him which specified these new duties or did he undertake those new duties under the terms of his original contract?

THE WITNESS: Under the terms of his original contract, there has been no renegotiation.

MR. KENYON: In other words, all he has been given then obviously was a new title?

THE WITNESS: Well, the new title and a new function.

MR. KENYON: But, I'm talking in terms of anything specific in writing. There was no contract or renegotiation which would specify these new duties?

THE WITNESS: No, there was not.

MR. LAVERY: Mr. Orman, I didn't mean to overlook you.

MR. ORMAN: I think the questions were very intelligent.

EXAMINATION

BY MR. ORMAN:

Q Mr. Shane, when Mr. Levinson came back to work for Universal on April 16, 1973, were you in the same office with him?

A I'm not sure what you mean by was I in the same office.

Q In the same room.

A At any time?

Q Let's say at any time, yes.

A Yes.

Q Tell us when you were in the same office with him during the course of the strike.

A Oh, I would say that I saw Mr. Levinson perhaps eight or nine different days during the strike.

Q This was after April 16?

A Yes.

Q Will you tell us approximately how long each contact was.

A Oh, anywhere from a minute or two to an hour.

Q Would it be a fair statement that Mr. Levinson probably spent at least a six to eight-hour day at the studio?

A I believe so. There were times when he left the lot to go to CBS to have meetings there.

Q Do you know how often he left the lot?

A No, I don't.

Q Apart from those eight or nine contacts you had with him and one lasting from a minute to about an hour, you don't know what he was doing first-hand, do you?

A Well, he was -- I saw him -- I'm sorry. Could you read the question back again?

(Whereupon the previous question was read by the reporter.)

A No, I don't.

Q So, you don't know whether or not he was writing

during those hours that you weren't with him?

A No, I don't know. I know what his job function was.

Q You don't know if he was working with another writer during those hours, do you?

A I do know that the one project that he has a go ahead on was a project with a Canadian writer by the name of Max Cohen, and Mr. Cohen did not have any contact with us during the strike.

Q You don't know whether or not Mr. Levinson was working on this script?

A I know it would have been a waste of time because the project was changed from eight one-hour episodes to a single two-hour pilot. It was awaiting Mr. Cohen's return after the strike.

Q You don't know whether or not Mr. Levinson was discussing a particular script with a director?

A No, I don't, but he didn't have any scripts to be produced.

Q Do you know first-hand if he did any of the scripts that were to be produced?

A Yes.

Q On what basis do you make that statement?

A Because he is not assigned as a producer to any show and he has no scripts that are in teleplay form for the purposes of his new job.

Q In other words, you are stating that his letter to Mike Franklin, dated April 17, that is now on the record

is basically a meaningless letter?

MR. HOLTZMAN: One of us ought to object to that, Mr. Chairman. It's argumentative. The letter speaks for itself in full testimony and to try to characterize it out of the mouth of the witness is inappropriate.

MR. ORMAN: I'll withdraw the question.

MR. LAVERY: The question is withdrawn.

Did you have a question?

MR. WHITE: Just one question. Just one two-part question.

Just to be clear on this, you are testifying that Mr. Levinson reported for work at Universal from April 16 through the end of the strike and I assume that is all business working days?

THE WITNESS: Well, I have no first-hand knowledge that he was there every day. I did see him as I testified on several occasions.

Q BY MR. ORMAN: It was eight or nine days within that period?

A Yes.

Q During that time he was there to render services of some sort to the studio?

A Yes, in his executive capacity.

MR. PEYSER: In his producing capacity honoring his contract as a producer?

THE WITNESS: Yes, he did have a contract as a producer but that is not the job in which he was functioning.

MR. PEYSER: So, he was kind of rehired then in a

different capacity; is that what you're saying?

THE WITNESS: He was called back and under his existing contract served in a different capacity. The contract is broad enough to say production executive without changing the contract.

MR. PEYSER: What I would like to just kind of air is a peculiar feeling that I have about this, gentlemen, which is that somehow rather conveniently David Levinson's vacation began the day we all started picketing -- his "vacation" began on that day. In other words, he was accepting it through this vacation. He was accepting the position of the strike; he was not reporting for work. In other words, he was honoring the strike from the 6th of March until the 16th of April. On the 16th of April, he read or something was pointed out to him that there was an NLRB decision made which prompted him to write a letter to Mike Franklin saying, in essence, he could no longer honor the strike and that he was doing it up front and he was going to now start violating the strike rules and was going to cross the picket line to honor his contract as a producer. Isn't that really what we're saying?

MR. SUSMAN: No, because he wasn't called back until April 16. Up until then, he was either on vacation or not required to come to the studio. It wasn't until April 16 that the studio called him back to undertake his new activities.

MR. PEYSER: Was he getting a two-week vacation?

THE WITNESS: I believe he had a three-week vacation. My recollection is it started the week before the strike. This is, as you know, the traditional vacation period because it's selling season with the networks and there's nothing in production. Most of the people were on vacation starting some time either the latter part of February or the early part of March -- excuse me -- his vacation ended around the 15th -- the 20th of March and he was off salary for four weeks.

MR. PEYSER: But, he never went to work. He honored the picket lines; he honored the strike rules during that period. That's really what he did?

THE WITNESS: He did not come to work.

MR. ORMAN: In that way, I think we can all agree he was honoring the picket lines.

MR. LAVERY: The Chair has to intervene with a procedural matter. There are one or two members of the panel that have schedules to keep. The Chair is trying to decide whether we can wind up the present proceeding in the next few minutes or do we have to take an adjournment over the luncheon hour.

MR. HOLTZMAN: We have no further witnesses to call and no further evidence to present. We have some motions to make; these can be very brief.

MR. SUSMAN: I wouldn't think it would be more than five or ten minutes, Mr. Lavery.

MR. LAVERY: Let us proceed by all means.

MR. HOLTZMAN: I believe Mr. Orman was cross-examining.

MR. ORMAN: I have no further cross-examination.

MR. SUSMAN: No further questions of this witness.

MR. HOLTZMAN: No further questions.

MR. LAVERY: Summations?

MR. ORMAN: Yes, very briefly.

Counsel earlier said that the Guild has no right to presume that Mr. Levinson went across and wrote. I submit the Guild wasn't relying upon that presumption. I think Counsel has been skipping a stage. The only presumption the Guild makes is that when the Guild drew up the strike rules, it was acting rationally; and when the committee had a meeting, they weren't saying let's toss in this rule or that rule for the heck of it. There was specific meaning for it and one of those strike rules for which Mr. Levinson is charged is: "Do not go into the premises of a struck producer." Evidence shows why. There has been no dispute and Mr. Levinson is a producer.

You have heard testimony of Mr. Siegel that he would continually rewrite on his own or if he did not write on his own he would tell Mr. Siegel or the other writer what he specifically wanted; this is writing. When you tell a writer just exactly how you want it to be, you are writing just as much as if you sit down in front of the typewriter and make the words appear before you and this is the very reason that the Guild had the strike rules. There has been no contrary evidence. It is a fact that Mr. Levinson violated two specific strike rules: Strike Rule 12 and Strike Rule 13.

Upon that basis, I submit that this Trial Committee should find that the charges have been substantiated and you find that Mr. Levinson has violated these strike rules.

MR. LAVERY: Mr. Holtzman?

MR. HOLTZMAN: I will be very brief.

I reiterate each and every one of the motions I made at the outset of this meeting with the same force and effect that I have restated them as I will not do now. I think the evidence is crystal clear prior to the end of January at the latest that Mr. Levinson was a producer acting as such and serving the function of both executive producer and line producer with respect to the series The Bold Ones and doing all of those things which a producer customarily does.

The testimony that has been presented is that he is responsible for everything from hiring of writers, actors and musicians to preproduction, production work and post-production work; and he would involve himself directly at all stages as a responsible director should and his function was purely supervisory in that manner. Indeed, it has been testified he was the person responsible for labor management relations from the employer's point of view with respect to this particular production and I emphasize this evidence terminates not later than the latter part of January, 1973. The evidence further shows that he was on vacation after that; that he extended his vacation voluntarily and without compensation until

approximately April 16; that at that time he was required by his employer to return to work in what must necessarily be deemed to be an executive capacity; namely, the coordinating of new material for his employer with respect to the CBS network. The evidence is equally disputed that during this period of April 16, which is really the only period involved in the case, he functioned purely as an executive in an executive capacity and without any writing responsibilities or duties whatsoever.

Now, we cannot latently apply that despite his full-time responsibilities for other matters; and in light of his specific testimony with regard to the one writer with whom he presumably dealt, he could not have dealt with him because of the existence of the strike; that he was performing any duties of a writing character whatsoever. Indeed, this would be inconsistent with all of the testimony. It is an unallowable conclusion in light of the evidence.

Under these circumstances, there is absolutely nothing to indicate that there was any violation of any rule which this Guild might properly lay down for the conduct of its members during the strike, and the man must necessarily be acquitted.

One last thought: I want to emphasize particularly the fact that he was required to report to work. The suggestion of Counsel is that he was called back to "work with writers" and Counsel seems to infer from that inference that he was himself writing. There is no suggestion in the

record that he was called to "work with writers." On the contrary, he was called to work with his counterparts in the CBS network. The evidence is that he did not and could not work with writers during that period; but even if that were the case to work with writers in this industry, his is the function of an executive; it's the function of a producer. It's the function of an executive producer; and, indeed, as the witnesses pointed out, darn near everybody from the people over at the network to the highest company executives get themselves involved in the development of ideas and information goes down to the chain of authority through the producer through the story editor to the writer, and it's for this reason that work of this character has traditionally been excluded from the definition of writing services in the collective bargaining agreements. Now, we cannot ignore those. Under the circumstances, the charges should be dismissed.

MR. SEATON: I don't want to ask a question during the summation but perhaps Mr. Shane would answer this. I don't know Mr. Levinson but isn't it Levinson and somebody?

THE WITNESS: No, that's Dick Levinson.

MR. LAVERY: Mr. Susman, I didn't mean to pass you by. Do you want to continue by way of summation?

MR. SUSMAN: Only one observation if I may. With regard to the strike rules, the sections that are claimed to be violated are Sections 1, 12, and 13, and to make this in the form of an informal motion or objection, I'll do this for the record. I have one particular point to make.

I don't think Strike Rule No. 1 is enforceable. It's doing anything that is prejudicial or harmful to the welfare of the Guild, to say it in substance. It's like passing a law that anybody is guilty of a crime if he does anything prejudicial in the interest of the United States or in the State of California or in the city of Beverly Hills. That kind of penalty or sanction has traditionally throughout the history of this country and certainly in recent years been held unconstitutional. You can't charge somebody with a crime or a penalty the nature of which is not specific enough for him to know what is not permissible. I think number one it is clearly an invalid and an unenforceable provision.

As far as 12 and 13 are concerned, I think it has been the position of the Guild up to now, and certainly in prior proceedings along the way and it certainly has not been the recent decisions of all the courts, unless the particular Guild member was performing the function for which he was a Guild member; then the Guild has no jurisdiction or authority to penalize him at all. A man can be a writer and a member of the Guild and go into a studio to paint a wall and the Guild has no authority to penalize him under the applicable court decisions including those that have come down in the recent months.

Finally, Strike Rule 13 which prohibits a member from entering the premises and so on is clear to me as I read it that along with the other provisions here that it

/ / /

only relates in its meaning, contention and otherwise from going on the premises to perform writing services. Certainly, that is the rule that all the courts have enunciated that have ruled on this provision heretofore. If you read that altogether, I think it's really directed at that. I don't think he has violated any of those rules.

MR. LAVERY: I think one of the Committee members has a question.

MR. PEYSER: I'm curious about what a new material coordinator does and really I'm troubled by thinking that a guy in a new job as a new materials coordinator from April 16 to the end of the strike is just sitting there reading the Trades and periodically going over to see Frank Barton or whatever the man's name is who paid him a handsome salary if not to in some way develop material.

I don't know Mr. Levinson at all and I wouldn't know him if he backed into me; but from what I've heard, he is a bright executive with imagination and ability. It just seems curious to me why he would be sitting there and reading the Trades.

THE WITNESS: Well, he was not just sitting there reading the Trades. He was reviewing the material on hand. There were certainly projects that hadn't gotten very far from the prior year but he was not familiar with them because this was a new job for him, so he was reviewing the pilot material that we did have.

MR. PEYSER: Doesn't he have to make suggestions?

THE WITNESS: Of course.

MR. PEYSER: Doesn't he have to do something to try to get it into shape?

THE WITNESS: He couldn't. There were no writers, but he was discussing it with Frank Barton as you say and suggesting ways to handle it. I think one of the things that did develop from these discussions was how to handle this project I mentioned, which initially was going to be a mini-series. During these discussions, it was agreed to do a two-hour pilot instead of the mini-series without having to go into the specific details of what the script was. They decided this project should lend itself to a two-hour pilot. Now, that's the kind of thing he was doing.

MR. LAVERY: Gentlemen, I think we have taken this as far as we can. Two of our members have to leave almost immediately. So, with your permission, I would like to read the traditional closing paragraph:

The matter will be taken under submission by the Trial Committee. After the Committee has deliberated, it will submit its written recommendation as to guilt or innocence along with its recommendation for disciplinary action, if any, to the Board of Directors, who under the Guild's Constitution and By-Laws have the authority to either accept, reject or modify it.

In order for this Committee to make a recommendation to the Guild, it will require a vote of no less than five members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the respondent be acquitted of the charges.

There being nothing further, this meeting is adjourned.

(Whereupon, the documents herein were marked and received into evidence.)

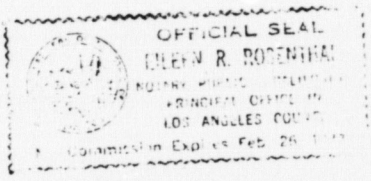
(The proceedings were concluded at 12:45 p.m.)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I, EILEEN R. ROSENTHAL, C.S.R., Notary Public for the State of California, certify:

That the foregoing transcript of proceedings was taken before me at the time and place therein set forth and recorded by me stenographically; thereafter, my notes were transcribed into typewriting under my supervision.

In witness whereof, I have subscribed my name and affixed my seal this 23rd day of August, 1973.



Eileen Rosenthal
Notary Public in and for the
State of California

ORIGINAL

NOON & PRATT

In the Matter of)
)
WRITERS GUILD OF AMERICA,)
WEST, INC.,)
)
vs.)
)
WILLIAM ROBERTS)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Taken at
8955 Beverly Boulevard
Los Angeles, California

10:10 A.M.
Friday, August 31, 1973

REPORTED BY:

BEN HYATT,
CERTIFIED SHORTHAND REPORTER

NOON & PRATT
Certified Shorthand Reporters
1930 WILSHIRE BLVD., SUITE 400
LOS ANGELES, CALIF. 90057
PHONE: 484-9770

APPEARANCES

PANEL MEMBERS: BARRY ORINGER, Chairman
JOHN LEE HAHN
NORMAN PANAMA
JACK ELLISON
E. JACK NEWMAN

For the Writers Guild of America, West, Inc.:

MILTON ORMIN, Esq.
3242 West 8th Street
Los Angeles, California 90005

For Respondent William Roberts:

DERN and MASON
By: DIXON Q. DERN, Esq.
SEYMOUR SWERDLOW, Esq.
9465 Wilshire Boulevard
Suite 620
Beverly Hills, California 90212

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Lila Garrett				
By Mr. Ormin	6			
Arthur M. Eisenson				
By Mr. Ormin	28			
Gerdon Trueblood				
By Mr. Ormin	33			
Mary Dorfman				
By Mr. Ormin	35			
By Mr. Dern		37		
Edmund H. North				
By Mr. Ormin	45		50	
By Mr. Dern		48		
William Roberts				
By Mr. Dern	60			
By Mr. Ormin		86		
By Mr. Panama	89			
By Mr. Mahin	95			
By Mr. Newman	96			

Los Angeles, California, Friday, August 31, 1973, 10:10 A.M.

* * * * *

MR. DERN: My name is Dixon Dern. I am appearing with my associate, Mr. Seymour Swerdlow, on behalf of Mr. William Roberts, who is the Respondent in this matter.

We are going to make some motions, which could be best characterized as standardized motions, but we have stipulated with your counsel, Mr. Ormin, that prior to doing that he may put Mrs. Garrett on as a Guild witness without prejudice to our making motions.

Is that correct, Mr. Ormin?

MR. ORMIN: That's correct.

CHAIRMAN ORINGER: That's fine. I just want to enter some material into the record.

The hearing will come to order.

This is the disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus William Roberts. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and Bylaws of the Writers Guild of America, West, Inc.

The members of the trial committee are John Lee Mahin, Norman Panama, Jack Newman, Jack Ellison, Barry Oringer, Chairman.

Will the parties please state their appearances for the record?

For the Guild?

MR. ORMIN: Milt Ormin, appearing on behalf of the Executive Director of the Guild.

CHAIRMAN ORINGER: For the Respondent?

MR. DERN: Dixon Q. Dern, Seymour Swerdlow.

CHAIRMAN ORINGER: Are there any other appearances to be made in this matter?

Let the record show no response.

Before we proceed I wonder if we should --

MR. DERN: Mr. Chairman, at this point may I move you to furnish me with a copy of the Constitution and Bylaws that you referred to in your first opening statement?

CHAIRMAN ORINGER: Mr. Ormin?

MR. ORMIN: At the first moment I will be glad to furnish you with a copy of the Constitution and Bylaws.

CHAIRMAN ORINGER: Lila, can we wait for about another three minutes just to enter some more material into the record?

I have a copy of the charges and a cover letter sent by certified mail to the Respondent.

What date is that? I have a mass of documents here.

MR. ORMIN: July 30th is the date for both the covering letter and the actual notice of disciplinary hearing and

charges. And there is a letter from Mr. Dixon Dern dated August 3rd to me, Milton Ormin, in which he confirms that we have agreed to continue this matter to today's date.

CHAIRMAN ORINGER: Okay.

I have a copy of the Charges and a cover letter sent by certified mail to the Respondent on July 30 with a signed return receipt attached. I have marked these as Trial Committee's Exhibit No. 1. Is there any objection to the receipt in evidence of Trial Committee's Exhibit No. 1?

MR. DERN: I don't have a copy of the cover letter.

MR. ORMIN: Yes, you do.

MR. DERN: I am sorry. No objection.

Are those both Exhibit 1?

MR. ORMIN: Yes. Collectively marked Committee Exhibit 1.

No objections, Mr. Chairman.

CHAIRMAN ORINGER: I have marked as Trial Committee's Exhibit No. 2 a one-page letter requesting a continuance of the hearing, dated August 3, 1973, addressed to Mr. Milt Ormin and signed by Dixon Q. Dern of Dern and Mason.

Now, we referred to a letter granting a continuance, and I don't have that.

Is that the letter from you, Milt?

MR. ORMIN: I don't think I sent a letter. This letter from Mr. Dern is pursuant to a telephone conversation.

CHAIRMAN ORINGER: So, in other words, the continuance

was granted?

MR. ORMIN: Yes.

CHAIRMAN ORINGER: And we are talking about two today?

MR. ORMIN: We had a telephone conversation granting a continuance, and Mr. Dixon Dern sent me Exhibit No. 2 confirming our agreement for continuance to today's date.

CHAIRMAN ORINGER: Is there any objection of the receipt into evidence of Trial Committee's Exhibit No. 2?

MR. ORMIN: No objection.

CHAIRMAN ORINGER: I assume that the parties for the moment are going to defer opening statements until we hear from Miss Garrett; is that right?

MR. ORMIN: Yes. By stipulation of the parties we are going to call Miss Garrett out of order because she has a prior appointment.

MR. DERN: That is so stipulated.

LILA GARRETT,

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Miss Garrett, will you give your full name and spell it, please.

A Lila, L-i-l-a, Garrett, G-a-r-r-e-t-t.

Q Are you a member of the Writers Guild?

A Yes.

Q How long have you been a member of the Writers Guild?

A For about ten years.

Q During the recent strike did you engage in any strike duties?

A Yes.

Q Will you tell us what they were?

A I picketed at Goldwyn Studies and at Twentieth Century-Fox.

Q With reference to Twentieth Century-Fox, can you tell us what dates you picketed Twentieth Century-Fox?

A I picketed on the week of April 9th to the 13th and then I was picket captain for the week of April 30th.

Q When you say "April 30th," then extending into May 4th, 1973?

A That's right.

Q With reference to the week beginning April 9th, can you tell us what shift you picketed?

A I was on the shift from 12:00 to 3:00.

Q Was there a shift there before you?

A Yes. From 9:00 to 12:00.

Q Was there a shift there after you?

A Yes. From 3:00 to 6:00.

Q With reference to your picketing during the week April 30th to May 4th, 1973, were you there during the entire

day?

A I was the picket captain. I was back and forth for the entire day.

Q And was there picketing at Twentieth Century-Fox for the entire day?

A Yes.

Q And --

MR. DERN: I move to strike the answer to the last question, Mr. Ormin. She doesn't know.

THE WITNESS: I certainly do know.

MR. DERN: How do you establish that she knows?

THE WITNESS: I live three blocks from Twentieth Century-Fox and I was very attentive to my picketers. I brought them sandwiches, I brought them coffee, I talked with them and joked with them. I always checked the beginning of every shift and at the end of every shift. I was really quite thorough in my duties.

MR. DERN: In other words, your testimony is you went back and forth?

THE WITNESS: Yes; that is correct.

MR. ORMIN: Q During the week of April 30th to May 4th about what time did the picketing begin at Twentieth Century-Fox?

A It began at 9:00 o'clock in the morning.

Q What time did it end?

A It ended at 6:00.

Q Are these the only two weeks that you recall picketing Twentieth Century-Fox?

A Yes, they are.

MR. ORMIN: I have no further questions.

MR. DERN: No questions.

CHAIRMAN ORINGER: Thank you very much.

(Whereupon, the witness was excused.)

CHAIRMAN ORINGER: Returning to the usual procedure, do the parties wish to make opening statements?

MR. ORMIN: The Guild waives its opening statement, Mr. Chairman.

CHAIRMAN ORINGER: Do the parties appearing for the Respondent wish to make an opening statement?

MR. DERN: I don't know what your standard procedure is here, Mr. Chairman. I am prepared at this point to make the motions and objections that are contained in the documents which have been furnished to you and Mr. Ormin. I should probably explain that these are in substance similar to those which have been made in prior proceedings by other counsel.

CHAIRMAN ORINGER: I am sorry. You said that these are similar to motions made in previous hearings?

MR. DERN: Mr. Reporter, would you please read back what I said.

(The record was read as follows:

"MR. DERN: Mr. Chairman, I am prepared at this

point to make the motions and objections that are contained in the documents which have been furnished to you and Mr. Ormin. I should probably explain that these are in substance similar to those which have been made in prior proceedings by other counsel."

MR. DERN: Mr. Ormin is willing that these go in with the understanding that any objections that he has made in prior proceedings would be deemed made in this proceeding and any arguments that have been made in prior proceedings will be deemed made in this proceeding. If that is satisfactory --

MR. ORMIN: That is satisfactory and so stipulated.

Mr. Chairman, could we go off the record for about two minutes so you can consider these motions while I make a telephone call to find if I have a witness plus getting a copy of the Constitution?

CHAIRMAN ORINGER: Okay. We will recess for five minutes.

(Whereupon, a recess was had.)

CHAIRMAN ORINGER: Back on the record.

Is there anything that either party wishes to say additionally?

MR. DERN: Let me ask you, Mr. Chairman, if you want us to read the substance of each motion into the record?

CHAIRMAN ORINGER: I don't think that is necessary. We have consulted the statement and we are pretty familiar

with it. I just wanted to give you the opportunity of speaking.

MR. DERN: Are you prepared now to make a ruling?

CHAIRMAN ORINGER: Yes, we are.

MR. DERN: And you will specify your ruling as to each motion, I understand?

CHAIRMAN ORINGER: Well, I could give you the ruling as to all the motions, because it is the same ruling.

MR. DERN: I am stunned to hear that.

CHAIRMAN ORINGER: Why are you stunned to hear that?

MR. DERN: I would think that you would consider each one on its own merits.

CHAIRMAN ORINGER: If you would like us to address each motion for the record, we can do that.

MR. DERN: I would like that.

CHAIRMAN ORINGER: Denied.

MR. DERN: You are denying each and every motion?

CHAIRMAN ORINGER: Yes. And we will proceed to hear the case.

MR. DERN: We are reserving the right, Mr. Chairman, after you hear Mr. Roberts' case to make a new motion for dismissal based on the facts.

CHAIRMAN ORINGER: Of course.

MR. DERN: I think one reason we are here instead of other counsel, we think we have a somewhat different situation, so I don't want anything to be construed as a

waiver of that fact.

CHAIRMAN ORINGER: Absolutely. And I want to add, also, that for all our benefits, so that the hearing doesn't take on the aspect of an overmechanical process, at any time if either party wishes to introduce material or evidence or motions, the Committee, which is not bound by the formal rules of evidence, its attitude is one of extreme openness and flexibility to give you a fair hearing.

MR. DERN: May I ask one other thing, Mr. Chairman. That the record indicate that you considered this entire document during a period of approximately three minutes.

CHAIRMAN ORINGER: Let me respond to that. I will be very, very glad at this point, if you are unhappy about that, to reopen this thing to some oral discussion point by point.

MR. DERN: Let me ask --

CHAIRMAN ORINGER: Just a minute. I just want to finish. I want the record to show that we were told that in substance these motions are just about identical to previously considered motions. We have consulted each motion and we have considered it and denied it.

Now, if you are not happy about that, and I mean this seriously, and you want a full and more detailed consideration of these motions, please state that and then we will be very glad to hear some oral discussion on each or any of these motions, all of them if you wish.

MR. DERN: Let me ask one question in that respect.

Obviously these are similar to the motions that various panels have had presented to them before, and I appreciate what you are saying.

Has each and every one of the five panel members participated in prior proceedings at which these motions have been made?

CHAIRMAN ORINGER: Yes.

MR. ORMIN: Mr. Chairman, since we now have on the record that the Trial Committee supposedly considered and overruled these motions in a space of three minutes or less, Mr. Dern has put the Guild in a rather untenable position. And I don't want to bore the Trial Committee with the sound of my voice. I am really not in love with the sound of my voice. But I think at this stage, in order to protect the Guild's position, I think it is incumbent upon me to address myself briefly to at least some of these motions, give the reason why the Trial Committee has overruled them.

MR. DERN: We have agreed, I think, Mr. Ormin, to incorporate by reference the position that you have taken in prior proceedings. I was mainly concerned to make certain that each motion had been considered separately, because each case is a separate case, and that each member of the panel was familiar with the substance of these motions from having sat on prior panels.

Mr. Oringer's statement, which is on the record, is that each panel member has reviewed these in prior cases,

which I am willing to accept.

MR. ORMIN: May the record for each Trial Committee member state that he has previously read and considered each of these motions?

CHAIRMAN ORINGER: No. I am going to deny that. I think there's a better and probably quicker way to do it.

What I would like to do, with the consent of the Committee members, is read each motion, not the grounds of the motion, but just read each motion and then at that point pause to ask if the Committee members have any question or if either party wishes to make any additional comment. I think it will be faster than this discussion.

MR. DERN: Might I suggest that it would implement it from my standpoint if you would merely read each motion, state in very short substance your reason for denial and then ask if we have any questions?

CHAIRMAN ORINGER: No, sir. The Committee is not bound to state a reason, and we are not going to do that.

MR. ORMIN: Mr. Chairman, at this point I am afraid I am going to have to give the Guild's position why I think each motion should be denied.

CHAIRMAN ORINGER: All right. Let's do that. But, of course, we will give the party for the Respondent the first opportunity to make any additional comments.

MR. DERN: We will stand by the stipulation. I think that Mr. Ormin is out of order.

CHAIRMAN ORINGER: I am going to rule that he is in order. I want to allow the maximum leeway for each party to make as full and fair a case for himself as possible.

We start with --

MR. DERN: Mr. Chairman, before you start I am furnishing a copy of these to the reporter.

How are you marking exhibits? Do you want us to start numbering these as ours?

MR. ORMIN: Yes. The practice has been that this would be Respondent's Exhibit 1 and --

MR. DERN: Let's use A through Z, since you are 1 through 100.

CHAIRMAN ORINGER: Let's go off the record for just one moment.

(Whereupon, a discussion was had off the record.)

CHAIRMAN ORINGER: We are back on the record.

I just want to again urge both parties that this is a Committee of laymen, and if any party feels anything is being omitted that should be included, please speak up.

MR. DERN: Mr. Chairman, I want to make it perfectly clear that I am perfectly willing to put these motions in as they are. They provide within the text of them that they have been argued before and that the arguments of both parties are recognized as a part of them. I am perfectly willing to move forward, frankly.

CHAIRMAN ORINGER: Mr. Ormin, are you now ready to move forward?

MR. ORMIN: Will you stipulate that the Trial Committee members are thoroughly familiar with these arguments, have duly considered them and that is the reason why they have overruled them?

MR. DERN: I can't stipulate to something I don't know. And it's rather unusual to take a trial tribunal on voir dire, Mr. Ormin. You may certainly ask them any question you want to to verify that, and if it sounds proper, it will be on the record.

MR. ORMIN: With all due respect, Mr. Dern, we are building up a record here in which perhaps a judge some future date will be reading it, and you have us in the posture of this Trial Committee summarily overruling motions inside of three minutes, and when you make that statement then I say at this point I have got to respond briefly, you then say I am out of order.

MR. DERN: Mr. Ormin, let me just ask the panel members a few questions. It's just a matter of fact that the motions were overruled in three minutes. If you wish to ask each of the panel members whether either on this occasion or on prior occasions they have read these same or similar motions and are fairly familiar with the substance and effect of them and took that into account when they made their ruling, be my guest and it will save a hell of a lot

of time.

CHAIRMAN ORINGER: Let the record show about eight or ten minutes. It wasn't really three minutes. There is a material difference.

Is that okay with you, Milt?

MR. ORMIN: No, Mr. Chairman.

At this point I would just as soon be my own guest and make my own decisions. I don't want to be in the posture of stating that the reasons for the denial of the motions are not on the record. I think we are beginning to waste time and there's no way around it.

Let's begin. Let's discuss these motions briefly. Let me respond as rapidly as possible and then maybe we can get on with it.

CHAIRMAN ORINGER: I would like to make one further amendment to that. I will read the motions, I will ask each member of the panel if he is in any way unfamiliar or has any question about these motions, the grounds for it and so on. At that point I will ask the parties for each side to comment. If we can get along without any extensive argument on the substance of the motions, great. However, that privilege is not going to be denied to the parties. I would like to somehow compromise between expediting this thing and having a fair hearing.

We will proceed. My inclination is to proceed with Motion No. I on Page 2.

"Respondent moves the Committee to require Writers Guild of America, West, Inc. ('Guild' herein) and its executive director to furnish the charges against him to Respondent in the form and substance required by the Constitution and Bylaws and by law."

And this is followed by various grounds of motion points.

Now, are there any questions on the part of any member of the Committee first?

Let the record show there are no questions.

Does either party wish to make any comment?

MR. DERN: May I ask one question, sir?

I have now been furnished with a document entitled "Constitution and Bylaws," dated January 18, 1973. Is this the Constitution and Bylaws to which you referred in your opening statement?

CHAIRMAN ORINGER: May I see that?

MR. DERN: If so, may I ask that it be marked as an exhibit.

Mr. Ormin, I introduced Respondent's Exhibit A. Was there any objection to the introduction of that?

MR. ORMIN: No objection.

CHAIRMAN ORINGER: Do you have a copy of this?

MR. ORMIN: Yes, I do.

CHAIRMAN ORINGER: Is there any objection to the introduction of this?

MR. ORMIN: No. That may be introduced as Respondent's No. B.

MR. DERN: You want us to introduce your Constitution and Bylaws?

MR. ORMIN: The normal practice has been we take Committee notice of it.

CHAIRMAN ORINGER: We can mark this as Trial Committee's No. 3.

Are there any comments or questions from either party on Motion No. I?

MR. DERN: Well, I understand up front that you have already denied it. I am not going to make any argument on it.

CHAIRMAN ORINGER: Let me state that I will be glad to reopen --

MR. DERN: I understand you have denied the motion, and I am not going to make any argument with respect to it because I believe that the -- and I will say this once and then I will just repeat the same phrase -- I believe the arguments with respect to that motion, arguments made in prior proceedings, are all incorporated in our Exhibit A; therefore, I will not restate what has already been done.

CHAIRMAN ORINGER: Mr. Ormin?

MR. ORMIN: Under that statement by Mr. Dern, I do not feel it is necessary to respond.

CHAIRMAN ORINGER: Fine.

Let me say that we are reopening the matter and this motion is denied.

Motion No. I-A.

"Respondent moves the Committee to dismiss each and all of the charges against him on the ground that they are, and each of them is, vague, uncertain and ambiguous."

Is there any question on this from the Committee?

Any questions or comments by the parties?

MR. DERN: My comment in response is the same as was with respect to the first motion.

CHAIRMAN ORINGER: Mr. Ormin?

MR. ORMIN: I have no comment, Mr. Chairman.

CHAIRMAN ORINGER: The motion is denied.

Motion No. II.

"Respondent moves the Committee to require the Guild to clarify the charges against Respondent and to remove ambiguities therefrom in the particulars hereinafter set forth."

And then the various grounds of the motion.

Are there any questions by the Committee?

There are none.

Are there any comments or questions from the parties?

MR. DERN: I am not making any comments for the

reasons stated with respect to Motion No. I.

CHAIRMAN ORINGER: Mr. Ormin?

MR. ORMIN: No.

CHAIRMAN ORINGER: The motion is denied.

Motion No. III.

"Respondent moves the Committee to require the charges against him to be presented by the Executive Director of the Guild."

Does the Committee have any questions or comments?

Let the record show there are none.

Parties?

MR. DERN: No comments for the reasons stated with respect to Motion No. I.

MR. ORMIN: No comments, Mr. Chairman.

CHAIRMAN ORINGER: The motion is denied.

Motion No. IV.

"Respondent moves to dismiss these proceedings and the charges against him on the ground that the Guild has no jurisdiction to impose discipline or to threaten to impose discipline on any member acting on the capacity of an executive, supervisor or management representative."

Committee?

There are no questions or comments from the Committee.

From the parties?

MR. DERN: I will make no further comment because of the reasons I stated with respect to Motion No. I.

MR. ORMIN: No comment, Mr. Chairman.

CHAIRMAN ORINGER: The motion is denied.

Motion No. V.

"As an alternative to Motion No. IV, above, Respondent moves the Committee to continue the within proceeding until such time as the National Labor Relations Board has entered its final decision with respect to the propriety of invoking or threatening to invoke discipline against Respondent on account of the matters referred to in the charges."

Any questions or comments from the Committee?

There are none.

From the parties?

MR. DERN: I will make no comment for the same reasons as stated with respect to Motion No. I.

MR. ORMIN: No comment, Mr. Chairman.

CHAIRMAN ORINGER: The motion is denied.

Motion No. VI.

"Respondent moves to dismiss the within disciplinary proceeding on the ground that the Guild has no jurisdiction or authority to discipline or to attempt to discipline persons

acting in a field of endeavor outside of the scope of the bargaining unit."

Any questions or comments from the Committee?

There are none.

From the parties?

MR. DERN: I will make no comment on this motion for the same reasons that I stated with respect to Motion No. I.

MR. ORMIN: I will make a comment on that, Mr. Chairman, during my closing argument. No comment at this time.

CHAIRMAN ORINGER: The motion is denied.

Motion No. VII.

"Respondent moves to dismiss the charges against him on the ground that the Committee is not constituted in the manner provided in the Constitution and Bylaws of the Guild."

Any questions or comments of the Committee?

There are none.

From the parties?

MR. DERN: No comment on the same grounds as I stated with respect to Motion No. I.

MR. ORMIN: No comment, Mr. Chairman.

CHAIRMAN ORINGER: The motion is denied.

Motion No. VIII.

"Respondent moves to dismiss the proceeding on the ground that any Trial Committee composed of members of the Guild cannot at this time and in

light of the recent strike try t matter in an impartial and disinterested mann

Any comments or questions from the Committee?

There are none

Parties?

MR. DERN: May I ask each member of the panel individually whether or not he was a member of the Strike Committee?

CHAIRMAN ORINGER: Mr. Ormin?

MR. ORMIN: I think it is certainly uncalled for at this time.

MR. DERN: It is a totally proper question in light of this objection, Mr. Ormin, and it certainly can be answered "Yes" or "No."

MR. ORMIN: I think it is an improper question. It's somewhat akin of asking a judge, "Can you judge this case fairly." And I think the Trial Committee can summarily find this question as improper.

CHAIRMAN ORINGER: The Committee rules that this question will not be answered.

MR. DERN: In other words, the Committee members are refusing to answer whether or not they were members of the Strike Committee?

CHAIRMAN ORINGER: The Chair rules that the question is out of order.

MR. DERN: I will make no further comment in light of

the discussion I had with respect to Motion No. I.

CHAIRMAN ORINGER: Mr. Ormin?

MR. ORMIN: I have lost track where we are, Mr. Chairman.

CHAIRMAN ORINGER: Motion No. VIII.

MR. ORMIN: I thought that the motions have already been denied and we are proceeding from there?

CHAIRMAN ORINGER: I have reopened it so we can hear each one. That's what we have been doing.

MR. ORMIN: Well, I would like to make a comment on that.

I just must repeat my previous comment, that a party on occasion says that a judicial body, that is a judge, cannot hear a matter because it is not in a position to render impartial judgment. In the normal procedure the judge renders his own decision as to whether or not he is biased and prejudiced and he states, "I am not biased and prejudiced, and therefore I am in a position to hear this matter."

I think that the Trial Committee is in the same position as a judge. I think the Trial Committee is in a position to state that "We are not biased and prejudiced. Our motions are not affected by the recent strike. We are here to examine the facts and make as honest and as judicial a finding as we can, and we think we can render a fair and equitable decision, and therefore for those reasons the

Trial Committee is overruling Motion No. VIII."

CHAIRMAN ORINGER: In denying this motion I am going to add on behalf of the Committee that each member of it is fully aware of its obligations here equally to the Respondent, who is a member of the Guild, and to the Guild itself. The motion is denied.

Motion No. IX.

"Respondent moves to dismiss the within disciplinary proceeding on the ground that the existence of inflammatory publicity of and concerning the status of respondent and the relationship of the charges against him to the recent strike has rendered it impossible at this time for him to receive a fair trial of such charges."

Any questions or comments by the Committee?

There are none.

By the parties?

MR. DERN: No further comment for the same grounds stated with respect to Motion No. I.

MR. ORMIN: No comment.

Mr. Chairman, my comment with respect to Motion No. VIII would be the same with respect to Motion No. IX.

MR. DERN: You wanted to make a closing argument with respect to one of these, Mr. Ormin. Which one was that?

CHAIRMAN ORINGER: I would say that a closing argument

seems to be out of order. The motions have been rejected in toto and individually by the Committee. I don't see what purpose a closing argument on the motions would have.

MR. ORMIN: Mr. Chairman, it wasn't even necessary for me to respond to that matter. Mr. Dern is talking about Motion No. VI. I am merely going to state as part of my argument -- part of my argument encompasses this motion; not as a motion, but the rationale behind this motion. And I will probably address myself to his contention with respect to Motion No. VI, although I am -- In other words, I am not going to refer to Motion VI as such as part of my argument.

MR. DERN: I just asked. I wasn't sure what you meant.

CHAIRMAN ORINGER: Where are we now?

MR. ORMIN: I take it that the Trial Committee is ready to proceed with this matter?

CHAIRMAN ORINGER: Yes, we are.

Do the parties wish to make opening statements?

Have you waived opening statements, Mr. Ormin?

MR. ORMIN: I don't know, but I am waiving it now, Mr. Chairman.

MR. DERN: As far as I am concerned, we will waive it.

CHAIRMAN ORINGER: We will hear the presentation of the Guild's case.

Mr. Ormin, will you please proceed with your case.

MR. ORMIN: Yes. My second witness will be Mr.

Eisenson.

ARTHUR M. EISENSON,

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Mr. Eisenson, would you give us your full name and spell it, please.

A Arthur M. Eisenson, E-i-s-e-n-s-o-n.

Q Mr. Eisenson, are you a member of the Writers Guild?

A Yes.

Q How long have you been a member of the Writers Guild?

A Since 1971.

Q During the recent strike did you engage in strike duties?

A Yes. As a picket at Twentieth Century-Fox.

Q Can you tell us when you picketed at Twentieth Century-Fox?

A Starting the first morning of the strike.

Q Which was March 6th, 1973?

A March 6th. I think the first week, third week, so forth until the change from the structure of the picketing, at which point it went on to the Red Week. I am not sure of

the dates.

Q If I said May 15th, 1973 was the change in the structure of the picketing, would that refresh your memory?

A I believe it would.

Q Do you think it is May 15th when you changed the manner of your picketing?

A I will take your word for it.

Q And after May 15th when did you picket at Twentieth Century-Fox, if you did?

A It would have been every third week. Let me look through my papers and see some things with dates.

Q Would it refresh your memory to look through your papers?

A Yes.

Q Are those notes that you made at the time of picketing?

A Some are. Some are materials that I brought with me from the Strike Committee, lists of times and dates.

Q Refresh your memory.

MR. ORMIN: I think under normal circumstances that would be permissible, Mr. Dern.

MR. DERN: I have no objection.

THE WITNESS: Right. I have one sheet with an indication of May 11th on it saying that something will happen as of May 11th, which I assume would have been --

MR. DERN: Mr. Chairman, may I interrupt to ask who

the gentleman is over here?

MR. ORMIN: Yes. That is going to be my third witness.

THE WITNESS: I would assume that the sheet I am looking at --

CHAIRMAN ORINGER: Can you speak up, please?

THE WITNESS: I would assume that the sheet I am referring to would have been issued around the time of May 5th.

MR. ORMIN: Q Now having looked at the sheet and refreshed your memory, can you tell us when you picketed in May?

A Yes. In May I was the picket captain for the Red Week. I personally picketed noon to 3:00.

Q Can you tell us the dates for Red Week?

A Do you have your calendar?

It would have been May 7th through 11th, and by this calendar indication, the next time would have been on the 28th of May through the 1st of June.

Q Did you picket at any time after the 1st of June at Twentieth Century-Fox?

A When was the strike over? When was the last day?

Q Approximately June 24th, perhaps ratified the 25th.

A It would have been June 4th, a Monday. There was a massive picket out at the front gate at Fox that went from 11:45 to 1:45.

Q Were you there?

A Yes.

Q During the weeks you were picket captain can you tell us the hours there was picketing at Twentieth Century-Fox?

A During the first weeks of the strike we were going 6:00 in the morning to 6:00 in the evening. Later on when the changeover to the Red, White and Blue Week system went into effect, we went 9:00 in the morning to 6:00 in the evening.

MR. ORMIN: I have no further questions.

MR. DERN: I have no questions.

CHAIRMAN ORINGER: Thank you.

(Whereupon, the witness was excused.)

MR. DERN: Mr. Ormin, if you have a line of witnesses lined up to prove that there were pickets at Fox, I can save you a great deal of time. I don't want to interfere with your case at all.

MR. ORMIN: We will take whatever stipulation you want to give us.

MR. DERN: None of these pickets are qualified to say, I gather, that they did or did not see Mr. Roberts cross the picket line. We know that there were pickets at least up to May 14th.

MR. ORMIN: Mr. Roberts knew there were pickets up through May 14th?

MR. DERN: No question about it.

MR. ORMIN: All right. I do have one more witness though. I am not going to have him testify based on your stipulation, as to all the time he was picketing, but I do want him to testify as to one specific week which I think is very important.

MR. DERN: I just wanted to expedite it.

MR. ORMIN: My third witness is Mr. Trueblood.

GERDON TRUEBLOOD

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Mr. Trueblood, would you give and spell your name for the record, please.

A Gerdon Trueblood, G-e-r-d-o-n T-r-u-e-b-l-o-o-d.

Q Are you a member of the Writers Guild?

A Yes, I am.

Q How long have you been a member of the Writers Guild?

A Since 1969.

Q Did you engage in picket duties at Twentieth Century-Fox during the recent strike?

A Yes, I did.

Q Did you engage in picket duties during

approximately the first week of April 1973?

A Yes.

Q Can you tell us the dates you engaged in picketing during this first week of April?

A April 2nd, 3rd, 4th, 5th and 6th.

Q 1973?

A Yes.

Q What hours of the day did you picket there?

A 9:00 to 12:00.

Q Was there picketing before you came on or after you left?

A After I left.

Q Do you know if there was picketing all day long there at Twentieth Century-Fox during that particular week?

MR. DERN: I move to strike the question. I don't think he is competent to answer it. Why don't you move along?

MR. ORMIN: Well --

MR. DERN: He wasn't there. If you are going to put him on, he wasn't there.

MR. ORMIN: Q When you went off duty did someone come along to relieve you?

A Yes.

MR. ORMIN: I have no further questions.

MR. DERN: No questions.

CHAIRMAN ORINGER: Any questions from the Committee?

There are none.

Thank you very much.

(Whereupon, the witness was excused.)

MR. ORMIN: My next witness, Mr. Chairman, is Mary Dorfman.

MARY DORFMAN,

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Will you please give and spell your name for the record.

A Mary Dorfman, D-o-r-f-m-a-n.

Q Mrs. Dorfman, you used to be an employee of the Writers Guild?

A Yes.

Q Were you employed during the recent strike?

A Through the greater portion of it.

Q You were an employee on April 4th, 1973?

A Yes.

Q Did you engage in a conversation with Mr. Roberts on that day?

A Yes.

Q Can you tell us the reason you happened to have this conversation with Mr. Roberts?

A There was a credit arbitration on the motion

picture "The Last American Hero," and I called -- spoke to Mr. Roberts regarding the decision of the Arbitration Committee as to the credits on that picture.

Q What did you tell him?

A I told him that he got sole credit.

Q First, was this a telephone conversation?

A Yes.

Q Can you tell us where Mr. Roberts was when you had this phone conversation?

A He was at the studio. I originally called Mr. Huckans, who had charge of credits, or who had sent the tentative notice originally. Since I couldn't reach Mr. Roberts at home, I called Mr. Huckans and told him -- they were in a hurry for the credits on the picture -- that I was calling him prior to talking to Mr. Roberts, which I usually don't do. But Mr. Huckans said that Mr. Roberts was at the studio and he would transfer me to his office, which he did.

Q This is Twentieth Century-Fox?

A Right.

Q Then you spoke to Mr. Roberts?

A Yes.

Q Will you tell us what you said and what he said?

A I explained to him that he had gotten the sole credit and that the other writer had not contributed sufficiently to share with him.

Mr. Roberts asked if the other writer had been

given additional dialogue credit.

And I said that, "We haven't had that credit in our Schedule A since 1948."

And Mr. Roberts said, "That's how far behind I am." He didn't realize that that credit was no longer valid.

Q Is that the substance of your conversation with him?

A Approximately, yes.

Q Thereafter did you record that conversation in a memo?

A Yes, I did.

Q And that memo was addressed to whom?

A To Mr. Alan Griffiths.

Q What date did the memo bear?

A April 4th.

Q The date of the conversation?

A Yes.

MR. ORMIN: I have no further questions.

CROSS-EXAMINATION

BY MR. DERN:

Q Mary, would you state what your position was at this time with the Guild?

A The Credits Administrator.

Q Was this an automatic credit arbitration?

A Yes, it was.

Q Why was that?

A Because Mr. Roberts was the producer of the picture.

Q In other words, it was necessary to have this credit arbitration because he was acting as producer of the film?

A Yes.

MR. DERN: I have no further questions.

CHAIRMAN ORINGER: Are there any questions from the Committee?

There are none.

Thank you very much.

MR. ROBERTS: Mary, could I request, if you have nothing pressing, that you stay on just to confirm something that went on which I will speak to when I tell my side of this? Do you mind?

THE WITNESS: No.

CHAIRMAN ORINGER: Would you like her to stay through this hearing? That's perfectly fine with us.

MR. ROBERTS: I would like her to, yes, because she was involved in quite a dispute over this thing, which she remembers, I am sure.

MR. DERN: Can we take a five-minute recess?

CHAIRMAN ORINGER: Yes. We are in recess.

(Whereupon, a recess was had.)

MR. DERN: I am going to ask Mary a few more questions.

MR. ORMIN: Mr. Chairman, you are the one who says we are off the record or on the record.

CHAIRMAN ORINGER: You are quite right.

We are now on the record and have been for the last 20 seconds.

MR. DERN: I am going to ask Mary a couple more questions, because it will relate to some of the testimony that Mr. Roberts is going to give in his own defense later, and possibly we can get that on the record. It pertains really to the behavior of Mr. Lamont Johnson, who was the director of this picture, in respect to a number of matters.

Q At the time of this credit arbitration did you receive any calls or did you place any calls to Mr. Lamont Johnson?

A No, I don't believe so. I got a letter from him.

Q You did get a letter from him?

A Yes.

Q Do you have it?

A No. It would be in the arbitration file.

MR. DERN: Do you have a copy of that letter?

MR. ROBERTS: Sure.

MR. DERN: Is it with you?

MR. ROBERTS: Yes.

May I refresh Mary's memory?

MR. DERN: I think we are informal enough to do that.

MR. ROBERTS: Lamont called and said such things as "Listen, lady, I don't think much of your Guild" and so on, didn't he say that?

MR. DERN: Q He did telephone you?

A Yes, I guess he did. He wasn't very happy with the result of the arbitration.

Q Mr. Johnson, the director, was not happy?

A That's correct.

Q Did he give you any reasons why?

A Well, he felt that William Kirby had really fixed it up so that it would be a very good picture.

Q I take it William Kirby was the other writer involved in the arbitration?

A Yes.

Q Did Mr. Roberts contact you to set up a screening of the picture for the Arbitrator?

A Yes.

Q What were the facts surrounding that?

A Either Mr. Johnson and whoever the other gentleman was wrote a joint letter, felt that if the Committee saw the picture which contained Mr. Kirby's changes that they might feel that he should share credit with Mr. Roberts, so a showing was set up.

Q Is it normal to screen a picture in a credit arbitration?

A We have had them. It's not normal. It isn't

the regular thing, but we have had pictures screened.

Q And the entire three members went out and looked at it?

A Yes.

Q Do you know where it was screened?

A No. It was screened in Hollywood somewhere. It wasn't at Twentieth Century-Fox.

Q It wasn't screened at Fox?

A No.

MR. DERN: We have no further questions of this witness, nor will we require that she stay through the rest of this proceeding.

CHAIRMAN ORINGER: Thank you.

Any questions?

MR. MAHIN: What time of the year was this?

THE WITNESS: It was in April, April '73.

MR. MAHIN: April of 1973?

THE WITNESS: Yes.

MR. DERN: I believe she testified that she called Mr. Roberts to give him the decision around April 4th.

I just want the record to show that it is a pleasure to see you.

THE WITNESS: Thank you.

CHAIRMAN ORINGER: Any other questions?

Thank you, Mary.

(Whereupon, the witness was excused.)

MR. ORMIN: Mr. Chairman, I have one more witness, but before I call the witness I would like to submit in evidence by stipulation certain records.

As Guild's Exhibit No. 1 --

MR. DERN: You are down to No. 4, sir. This is Guild's?

MR. ORMIN: Yes. As opposed to the Trial Committee. We have distinguished in our minds between the Trial Committee, which is a judicial body and --

CHAIRMAN ORINGER: I hope that distinction is in everybody's mind, because it is very important.

MR. ORMIN: -- and the Guild, which is a participant at this juncture.

MR. DERN: We don't distinguish a difference, but you can number them any way you please.

MR. ORMIN: As Guild's No. 1, the beginning strike order of the Guild, dated March 5, 1973, which states "Notice to all members, strike order."

CHAIRMAN ORINGER: Any objection?

MR. DERN: No objection.

CHAIRMAN ORINGER: It is admitted as Guild's Exhibit No. 1.

MR. ORMIN: As Guild's Exhibit No. 2, the Rules for the conduct of members during a strike, dated February 20, 1973, which also was mailed to all members of the Guild.

CHAIRMAN ORINGER: Any objection?

MR. DERN: No objection.

CHAIRMAN ORINGER: That is Guild's Exhibit No. 2.

MR. ORMIN: As Guild's Exhibit No. 3, the amended Rules for the conduct of members during a strike, dated May 1, 1973, which was sent to all members of the Guild.

CHAIRMAN ORINGER: Any objection?

MR. DERN: No objection.

CHAIRMAN ORINGER: Admitted as Guild's Exhibit No. 3.

MR. ORMIN: As Guild's Exhibit No. 4, the Writer's Credit Record for Mr. William Roberts, which is a one-page document.

CHAIRMAN ORINGER: Any objection?

MR. DERN: Is that accurate?

MR. ROBERTS: There's just one thing left off. It doesn't matter.

MR. DERN: There is no objection.

CHAIRMAN ORINGER: Admitted as Guild No. 4.

MR. ORMIN: As Guild's Exhibit 5, a several-page document relating to Mr. Roberts, one side of which is the record of member's payments and the other side of which is member's work record. This document has 11 pages, which seems odd. I thought there were 12 pages. I count 11.

CHAIRMAN ORINGER: Any objection?

MR. DERN: What is the purpose of introducing this and what period of time does it cover?

MR. ORMIN: It covers 1952 to the present, it shows

the history of Mr. Roberts during the period he was a member of the Writers Guild, it shows his history as a writer, what writing he has done. I think that the Trial Committee can take into consideration his past history as a writer. I think that's relevant.

MR. DERN: In other words, are you attempting to show by this that he was a member of the Guild during this period and that he wrote during this period?

MR. ORMIN: Yes, among other things. And to show a little bit more specifically what he did write.

CHAIRMAN ORINGER: Any objection?

MR. DERN: Do you have records, Mr. Ormin, that go back prior to this date?

MR. ORMIN: Yes. I understood that we were going to stipulate that Mr. Roberts became a member of the Guild in 1937 and has been a member through the present time, but I don't propose to introduce records with respect to him prior to 1953.

MR. DERN: That stipulation is satisfactory. And with that stipulation, there is no objection to this piece of paper.

CHAIRMAN ORINGER: Admitted as Guild's Exhibit No. 5.

MR. ORMIN: I have no more exhibits, Mr. Chairman.

At this point I propose to call my last witness, Mr. Ed North.

EDMUND H. NORTH,

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Mr. North, will you give and spell your name, please.

A My name is Edmund H. North, E-d-m-u-n-d N-o-r-t-h.

Q And are you a member of the Writers Guild?

A Yes, I am.

Q How long have you been a member?

A I have been a member since 1934 or '35. I hope that information is privileged.

MR. ROBERTS: I feel the same way.

MR. DERN: It's on the record now. You guys are in trouble.

MR. ORMIN: Q Mr. North, did you have occasion to speak to Mr. Roberts on April 4th, 1973?

A Yes, I did.

Q Can you tell us how it came about that you spoke to him?

A I was acting at that time as so-called strike coordinator working in Alan Griffiths' office, and there was a memorandum that came through addressed, I believe, to Alan Griffiths.

Q For the record, Alan Griffiths is Assistant Executive Director?

A Yes, he is.

I was delegated to look into this, and I called Bill Roberts at Fox, couldn't find him there, called him at home.

Q Did you call him at home the same day, April 4th, 1973?

A Yes.

Q And you spoke to Mr. Roberts?

A I spoke to him, yes.

Q Can you tell us what he said and what you said?

A Well, as I recall, I started the conversation by asking Bill if it were true that he had crossed the picket line at Fox and he said that it was true. He said that he was involved as a producer in post-production activities on a film at Fox which he had -- for which he had written the script. He volunteered the information that he felt that his services in his capacity as producer were very important at the time, very important to him as well as to the picture.

And I was genuinely shocked at his free admission that he had been crossing the picket line and his further statement that he intended to continue to do so. I pointed out to Bill what the possible penalties might be of this kind of action.

He told me that he had considered this very

seriously and come to the rationale and unemotional decision that this is what he proposed to do. That he had been doing it and he was going to continue to do it during post-production period on his picture.

Q With reference to his statement about post-production work, did he give you some details about what he was doing?

A He said the words "certain dubbing sessions, scoring sessions." I gathered the normal post-production activities of a major motion picture.

He specified, by the way, that he had done and as far as he knew intended to do no writing.

Q Did he make any statements about retakes?

A Yes. I believe the picture had some post-production retakes to be made, and he very much wanted to be around during that activity.

Q With reference to his statement that he had been going to Twentieth Century-Fox, did you get any indication as to how long he had been going there during the period of the strike?

A No. I got the impression that it had been -- that he had gone in quite a few times, but I don't believe any time element was mentioned.

Q With reference to the fact that he was going to continue working, did you get any indication about how long he thought he would have to continue working on this picture

after this date?

A Yes. I got the impression it would be a matter of weeks. I assume something in the nature of a month.

MR. ORMIN: I have no further questions, Mr. Chairman.

CROSS-EXAMINATION

BY MR. DERN:

Q Mr. North, in the course of your testimony you indicated that Mr. Roberts told you that he had rendered no writing services during the period of the strike up to April 4th; is that correct?

A That is correct.

Q What was your discussion with respect to the retakes that you testified to?

A Well, as I believe I said in my testimony, he did say that he had done no writing. And whether he was going to do writing or not of course I don't know.

Q Was there any discussion as to whether there would be any writing done in connection with the retakes? Did you raise that or did he raise it?

A I don't remember that this was raised. What I did say -- He said that he had done no writing.

I said, "Bill, that according to the Guild rules, the strike rules, has really nothing to do with it. You are acting in other capacities and crossing the picket line, and according to Guild rules that's a violation."

Q So notwithstanding the line of questioning of your counsel, there was no indication in this conversation that there would be any writing done during the retakes?

A He's not my counsel.

Q The Guild's counsel. Excuse me. I stand properly corrected.

A I didn't get the question.

MR. DERN: Would you read back my question, please.

(The record was read as follows:

"Q So notwithstanding the line of questioning of your counsel, there was no indication in this conversation that there would be any writing done during the retakes?")

THE WITNESS: No, I don't think it was specified by Bill as to whether he intended to do any writing or not.

MR. DERN: Q Did he discuss with you in any detail what the retakes were about or anything of that nature?

A No.

Q So you didn't get into that?

A No. It was said by Bill that there were to be retakes and he wanted to be around during that period.

MR. DERN: I have no further questions.

CHAIRMAN ORINGER: Does the Committee have any questions?

MR. PANAMA: I would like to ask a question of Mr. Roberts.

Bill, when did principal photography on the picture end, before the strike?

MR. ROBERTS: December 2nd, 1972.

MR. PANAMA: May I ask a direct question? Did you do any writing for the retakes?

MR. ROBERTS: No. There was no retake. Just the very tag of the picture.

MR. DERN: I think we can evolve during the course of this, Mr. Panama, that --

MR. ROBERTS: There was no writing at all. There were two lines spoken which the actor himself came up with. I mean two words. Four words. And that was it.

MR. PANAMA: Fine.

CHAIRMAN ORINGER: Are there any further questions by the Committee?

MR. ORMIN: I have some further questions, Mr. Chairman.

REDIRECT EXAMINATION

BY MR. ORMIN:

Q Mr. North, on occasions when you meet and consult with a producer and you tell him orally about a proposed picture you have, do you consider yourself at that moment engaging -- at that moment engaging in the profession of writing?

MR. DERN: I am going to object to the question, Mr.

Chairman. I don't see any relevance, and I don't think it is going to lead to any introduction of evidence that has any significance in this proceeding. I am not sure that he has qualified Mr. North for this purpose.

MR. ORNIN: Two things, Mr. Chairman. Mr. Dern's position is well taken. If he wants me to qualify Mr. North as an expert witness, I can do that. With respect to his first point, that it is irrelevant, to the contrary, the Guild's position is that its rules are based on logic and that it violates the rules if you do other things besides merely sitting at a typewriter and making words appear on paper. This is just one aspect of being a professional writer. There are many other things that writers do that come within the jurisdiction of the Guild that writers themselves consider they are engaging in the profession of writing, so I do think I may develop that.

CHAIRMAN ORINGER: Boy, I am boggled at this point.

MR. DERN: I am a little boggled, Mr. Chairman, so don't feel bad about it.

CHAIRMAN ORINGER: I am not making any comment on the objection or the answer to the objection. It seems that a lot of issues have been piled into it.

MR. DERN: Why don't we have the question read back.

CHAIRMAN ORINGER: I would appreciate that.

(The record was read as follows:

"Q Mr. North, on occasions when you meet

and consult with a producer and you tell him orally about a proposed picture you have, do you consider yourself at that moment engaging -- at that moment engaging in the profession of writing?")

CHAIRMAN ORINGER: Well, all right.

MR. DERN: My objection is on the grounds that I can't see relevancy of that question to these proceedings. Mr. Panama properly asked the question as to when the picture was finished in this connection and the writing was done a year prior. I don't understand the significance of it.

I am sorry, Mr. Ormin, I don't understand the reason for the question.

MR. ORMIN: I will address myself to that. The Trial Committee might know that Mr. Roberts is charged with violating Strike Rule 13, and Strike Rule 13 speaks in terms of rendering services for a producer. So based upon the Guild's own determination, when you render services for a producer, you have violated the Guild's rules and regulations.

MR. DERN: Wait a minute. Are we talking about 13 of the revised rules?

MR. ORMIN: Or 13 of the first rules. They have not been changed.

Now, I think it is a fair assumption that there is some logic behind these rules. I think it is a fair assumption that the Writers Guild recognizes it is a writer's union so therefore I think it is a fair assumption that the

Writers Guild has determined that when a man does -- when a member does something besides sitting at a typewriter he may be doing something that is within the jurisdiction of the Guild, and the Guild may prohibit him from doing it during a strike.

MR. DERN: Mr. Ormin, let's read the first sentence of No. 13 together.

"Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect."

There's no evidence here that Mr. Roberts was on the Fox lot to discuss the sale of a property, which your question goes to.

MR. ORMIN: No. But you --

MR. DERN: You asked Mr.North whether or not when he has a preliminary discussion with a producer he is acting as a writer. What does that have to do with the case?

MR. ORMIN: Well, we are now engaged in argument.

MR. DERN: Why don't we just get a ruling on the motion and go on?

MR. ORMIN: I am trying to find here somewhere the rules.

MR. DERN: I can loan you my set.

MR. ORMIN: Strike Rule 13 has another provision. It

talks in terms of contracts of employment. Now, it could be read as follows: "Members" --

MR. DERN: Wait a minute. "Could be read," let's read it.

MR. ORMIN: I am saying that when one reads a statutory provision one reads it logically, and you can't ignore that part of the provision that is irrelevant for the particular question at hand.

Now, Strike Rule 13 prohibits various different things, and one of the things it prohibits is as follows, and I am now quoting: "Members are prohibited from entering the premises of any struck producer for the purpose of" -- and I am now leaving out parts of it -- no, I take that back -- "for the purpose of discussion of contracts of employment," leaving out "the sale of material."

Now, we must draw by analogy, and this is not unusual to use, say, criminal law, which everybody recognizes is very stringent. And you must be very specific when you charge somebody with a crime. A well-established rule of criminal law is that a lesser offense is necessarily included in a larger offense. In other words, if you charge somebody with a felony of, say, stealing a thousand dollars, it necessarily includes the misdemeanor of stealing less than $200.

Now, the Guild's rules say you may not go in there for purposes of discussion, and by implication anything

with reference to contracts of employment. By definition this encompasses to go into a struck producer to engage in old employment, do anything with reference to previous employment about which you have a contract.

My position for the Guild is that the Guild has said you may not go to a struck producer and perform services. It must be assumed there are logical reasons for that rule, and therefore it must be assumed that a member is prohibited from doing more things than merely sitting at his typewriter and typing words on paper.

The reason for interrogating Mr. North is to show the many other things that a professional writer engages in, the many other things that the Guild considers within its overall jurisdiction. And I think my question is perfectly proper.

CHAIRMAN ORINGER: Well, I have some questions about it. I am not sure that -- It seems that -- I think the confusion has come from what appears to be a sudden turn, change of direction in the testimony. That Mr. North was testifying to a conversation he had with Mr. Roberts at a certain date and then it seemed to me abruptly that the conversation, with Mr. North still a participant, has switched to a discussion of the merits of Strike Rule 13. I am just saying that is confusing to me. I would like to refer to a moment to the charges.

It says specifically, "You are charged with

having crossed the Guild's picket lines at Twentieth Century-Fox Film Corporation during the months March, April, May and June of 1973 without having informed the Guild in advance of the nature of business with said company and without having obtained a Guild pass to enter said premises, and, 2, having during the months of March, April, May and June 1973 rendered services for Twentieth Century-Fox Film Corporation, a company against whom the Guild was at such times on strike."

Now, what is the discussion about now with Mr. North? I still don't get it.

MR. ORMIN: Mr. Dern has been assuming that what Mr. Roberts is doing is not "writing." He has been assuming that what he has been doing is not that of a writer. He has been assuming that what Mr. Roberts has been doing has nothing to do with the Guild's jurisdiction.

CHAIRMAN ORINGER: Let me interrupt at that point, because there's some confusion, and I invite the other members of the Committee to address this if they wish to also. There's certainly confusion in my mind, because "writing" is not mentioned in the charge and I wonder how it got into this discussion. You seem to be saying to us that these services constitute "writing," but that seems to be an amendment to the charge. I don't see "writing" anyplace in this charge. Can't we confine this to the performance of services without getting into a discussion of

whether these services are "writing"? It does not seem germane to this.

MR. DERN: I would like the record to show, Mr. Chairman, that Mr. Dern hasn't assumed anything yet because we haven't put on a case. I would hope you understand me.

CHAIRMAN ORINGER: Yes.

I am going to --

MR. ORMIN: May I make my argument, Mr. Chairman?

CHAIRMAN ORINGER: Yes.

MR. ORMIN: It seems to me that if Mr. Roberts went to his office at Twentieth Century-Fox during the strike just to paint his office because this was an opportune moment, it seems to me, technically speaking, he would be in violation of the Guild's rules. However, painting his office is really not a serious offense. However, if he did perform other services, I think this is a much more serious offense, and I presume I could go along and assume that the Trial Committee recognizes when he performs other services he is engaging in work that comes within the Guild's jurisdiction. I think I am entitled to develop that by expert testimony as to what the Guild considers a professional writer to be.

CHAIRMAN ORINGER: Okay. The Chair is going to rule on that as follows.

Just to stray for a moment, I am not making a legal determination. No member of this Committee is qualified to get into the legalities of it.

MR. DERN: You have one sitting up there that I would stipulate is qualified.

CHAIRMAN ORINGER: Do we have an attorney here?

MR. NEWMAN: Yes.

CHAIRMAN ORINGER: Do you want to comment on it? Please feel free.

It seems to me, it seems to the Chair, that the discussion you are referring to is material for a closing argument. Mr. North was testifying about matters of fact relating to a conversation between he and Mr. Roberts.

Now, what I would like to do at this point is rule that the testimony proceed for the moment ruling that question out of order and let the testimony proceed as to the conversation between Mr. Roberts and Mr. North. If after this testimony has been concluded the Guild wishes to call an expert witness to discuss the merits or the logic behind one of the strike rules, the Committee will rule on that separately. If you wish to present Mr. North again in that light, we will rule on it separately. Just for clarity's sake, I don't want to get tangled up with what seems to me two different kinds of testimony.

MR. ORMIN: May we go off the record?

CHAIRMAN ORINGER: That is really a plea for clarity by the Trial Committee, and not to be confused with --

MR. DERN: I refuse to go off the record unless I understand what you are going to do.

CHAIRMAN ORINGER: We can always go off the record and go back on.

(Whereupon, a discussion was had off the record.)

CHAIRMAN ORINGER: Back on the record.

MR. ORMIN: Mr. Chairman, at this time I do not have any more questions of Mr. North, but I would like to reserve my right to call him for further testimony along the lines that I have been engaging in up to now.

CHAIRMAN ORINGER: Understood. Thank you.

Let's proceed.

Do you have anything further, Mr. Ormin?

MR. ORMIN: The Guild rests, Mr. Chairman.

CHAIRMAN ORINGER: Respondent?

MR. DERN: Could we take a five-minute break before we start our case?

CHAIRMAN ORINGER: Certainly.

MR. DERN: How do you want to handle lunch?

CHAIRMAN ORINGER: That's a very delicate question. I spoke to Mr. Mendonsa and pleaded with him to see what he could do about getting sandwiches in here.

MR. ORMIN: May we go off the record, Mr. Chairman?

CHAIRMAN ORINGER: Yes, let's do that.

(Whereupon, a discussion was had off the record.)

CHAIRMAN ORINGER: Back on the record.

Mr. Ormin, do you have anything further?

MR. ORMIN: No. The Guild rests, Mr. Chairman.

CHAIRMAN ORINGER: And the Respondent?

MR. DERN: We will put on as our first witness Mr. William Roberts.

Our procedure, to save time, is I am going to ask Mr. Roberts a few preliminary questions, obviously, and then try to freewheel this to a certain extent and just let him tell of his activities during this strike period.

If any of you want to interrupt while he is making his statement, I think it is perfectly proper that you feel free to do so, unless it is interrupting a train of thought or something, and it may save time because you may think of things at that point which are pertinent and can raise them, if that procedure is okay with you.

CHAIRMAN ORINGER: Certainly.

WILLIAM ROBERTS,

testified as follows:

DIRECT EXAMINATION

BY MR. DERN:

Q Mr. Roberts, are you a member of the Writers Guild?

A Yes.

Q How long have you been a member of the Writers Guild? When did you first join?

A I first joined in '37. I think the Guild changed

and I wasn't writing for a long period of time. I think again in '46, as I recall.

Q You have been a member since then until the present?

A Yes.

Q Are you currently a member of the Writers Guild?

A Yes.

Q You worked on a film entitled "The Last American Hero"?

A Yes.

Q And that was based upon the factual life of a man named Junior Johnson?

A Yes; right.

Q How did you acquire and in about what year did you acquire the rights in that property?

A In January 1970.

Q And you acquired the rights from a third party, did you?

A Yes. Tom Wolf.

Q Did you then do any writing of a script based on that property?

A Yes. I wrote the story, rewrote -- wrote a script, rewrote it several times.

Q You did this for yourself or under employment?

A No. This was speculative on my own.

Q When did you first present that property to

Twentieth Century-Fox?

A Well, it was first presented in 1972.

Q Did you enter into any agreement at that time?

A No. They were interested in it, but the change in management caused the whole deal to die.

Q During this period were you in partnership with anybody else with respect to the property?

A Yes, I was.

Q What was that person's name?

A John Cutts.

Q Did you and Mr. Cutts form a partnership?

A Yes, we did.

Q What did you call it?

A Rojo Productions.

Q When did Rojo Productions first get into serious negotiation with Fox after the change in administration over there?

A It was somewhere around May or June 19 -- Wait a minute. I am sorry. That's in error. The first negotiation with Fox was in 1971 and the second time was 1972.

Q Did you enter into various agreements with them in 1972?

A That's right. Yes, I did.

Q Isn't it a fact that you personally entered into a writing employment agreement with Twentieth Century-Fox?

A Yes.

Q What was the purpose of that?

A To make revisions as required by the studio.

Q Isn't it also a fact that the partnership entered into an agreement with Fox to furnish your services as co-producers, you and Mr. Cutts, of the film?

A Yes.

Q Were there any discussions with Fox at the time of the negotiation relative to your creative controls with respect to the property and the production of the film?

A Creative controls?

Q What were your rights as far as the film was concerned?

A Well, I suppose the normal producer's rights, which are mostly rights of persuasion and can always be overruled by the studio, naturally. Rights of consultation with regard to post-production.

I think everybody here knows you don't get any absolute rights as a producer hired by the studio.

Q Isn't it a fact, though, that they did agree because this was your property you had consultative rights throughout the picture?

A Yes.

Q And you in fact did enter into an agreement with Fox, or the partnership did, and I am going to treat you and the partnership basically the same, where you were to render services to Fox as the co-producers of the film?

A Yes; that is right.

Q When did you complete the final draft of the revisions of the script for the motion picture, on or about?

A Well, the revisions were being made all the way through production, actually. It's very hard to say. You know, you do one set and then another set of revisions as required and then another writer was brought on. He did a complete revision, I revised his revision, continued to revise the script, as I say, continually through production.

Q When did the picture go into production?

A October the 14th, 1972.

Q When did it rap? When did you complete principal photography?

A December 2nd.

Q Where was the picture shot?

A In North Carolina and for one week in Virginia.

Q Where did you edit the picture, or where was the picture edited?

A Well, they were editing -- There were cutters there editing as they were shooting, but the post-production editing was done at Twentieth Century-Fox Studio.

Q I am going to show you a memo that you wrote dated February 26th.

A Yes.

CHAIRMAN ORINGER: Can we pause for just a minute to look at this?

MR. DERN: Certainly.

Maybe I should identify what it is, because we are going to come back to it later.

Q What is this?

A This is a memo written by me after seeing the director's cut of the film stating objections, mine and Mr. Cutts' to what we had seen on the screen, addressed primarily to Jerry Henshaw with copies going to other people. The purpose being to elicit studio support for our point of view with regard to the film, what should be done to it.

CHAIRMAN ORINGER: Excuse me. Would you like the Committee to examine this in any detail?

MR. DERN: I will try to bring out what it is and then you can decide.

CHAIRMAN ORINGER: That's fine.

MR. DERN: Q Does this document contain suggestions, for example, for changes about the film?

A Editing changes, yes. And one important thing which goes way back to the time it was shot. I will go into that in detail. The director photographed the ending of the film in a way which startled us all, including the studio, because it was never anticipated that the central character would be whipped at the end, be a loser, which is the way it was photographed, the way it was shot and acted.

I raised serious objections to that, so did Mr. Cutts. The director wouldn't even discuss it. He was very

angry and stalked out of the meeting. The suggestion for reshooting that very tag, which is about 20 seconds of screen time, was made in that memo after seeing the first cut.

Q Your suggestion, you are saying, was to make an upbeat ending?

A Yes, much more of an upbeat ending.

Q Instead of downbeat?

A Yes.

Q You wrote that memo and you made that suggestion on what date?

A This was February the 26th, 1973.

Subsequently, after pressure from other quarters, including salesmen -- Mr. Cutts was involved in that; I wasn't there. Sales people for Fox, they didn't like the ending either, and Jerry Henshaw finally said, "Reshoot it."

Q Let me interrupt you. Is this the reshooting that Mr. North was referring to?

A Yes. That tag.

Q Nothing else was reshot?

A Not after the completion of December 2nd. Things were reshot during the course of making the film.

Just parenthetically, Lamont Johnson, as I say, when we tried to discuss it with him during the course of production refused to discuss it and stalked out of the office where the discussion was taking place. He just

refused to discuss it at any time thereafter until ordered by the studio to reshoot the ending.

Quite honestly, I wasn't sure that he would do it even then, because very often the studio would order him to do something and he would either ignore the studio or do it his way. And this caused a great deal of friction during the course of production.

At any rate, I went in to the studio that day to make sure he did what he had been ordered to do. That was the reason for going in at that time.

Q About when was that? It was after March 6th; is that correct?

A Yes. It was during the strike.

Q When they reshot that ending or that tag, as you call it, did they follow the suggestions which you had written up in your February 26th, 1973 memo?

A Yes.

Q Were there any changes in dialogue?

A The actor, Jeff Bridges, my conception was that it be silent, that he make a triumph gesture to his friends with a cup that he won. And Jeff said that he felt awkward with that and, "Why don't I say, 'Hey, I won.'"

Q Did you furnish that line to Jeff Bridges?

A No.

MR. DERN: I would like to introduce this memorandum as Respondent's next in order, which would be Respondent's B.

CHAIRMAN ORINGER: Any objection?

MR. ORMIN: No objection.

CHAIRMAN ORINGER: It is admitted as Respondent's Exhibit B.

MR. DERN: Q Bill, there is no question in the minds of the panel or in our minds that during the period after March 6th through whatever the date was on the strike that you were on the Fox lot from time to time.

A That's right.

Q Rather than go through a point-by-point thing when you were there, I would like you to tell in your own words basically -- dates aren't too relevant -- when you went on the lot, what the purpose for going on the lot was and why you had to do it.

A Right.

Q I won't interrupt, unless I think we are getting off the track.

A First of all, just in general, Eddie North, everything he said was true, our conversation was exactly that.

I think the impression was left, however, that I was on the lot continually during this period. That was not true. I checked with my secretary prior to this hearing about the number of times she had me there according to her calendar. She came up with six dates. That is not accurate. It was more than that. It was more, I would say, like ten,

possibly as many as 12 times that I went into the studio.

The first two occasions were looping sessions. And I will get to that later. But it goes back to a long history of dispute between John Cutts and myself on the one side, Lamont Johnson and the executive producer on the other side regarding many, many things. And I don't like to say this, but there was a general distrust that I developed over this period of time because of things that Lamont did without consulting anybody. And that is the reason that I went to the first two looping sessions. Now, there were about ten in all. Some here, some in New York. I wanted to make sure that he wouldn't again do something capricious, or whatever the word might be. As I say, I didn't quite trust him. So I did go to the first two looping sessions, the more important involving Jeff Bridges and two other important characters. I found nothing to object to.

Q Let me interrupt you. Did you write any lines or did you make any script suggestions during those looping sessions?

A No. It was word for word what was in the script. To a great extent merely clarifying stuff that was covered up by track noises. This is a stock car racing picture. It contained all the noises of the wind, all the customary things that have to be looped. And in other cases merely reading the line some other way with emphasis, whatever.

Q Let me ask you one other question at this point.

I am going to show you a letter that was sent to you by Twentieth Century-Fox dated March 5th, the day before the strike started.

A Yes.

Q It ordered you to continue to show up.

A Yes.

Q Did you receive that letter?

A Yes.

Q Were you aware of the contents of it?

A Yes.

Q You were also aware of the fact that you were under a contract with Twentieth Century-Fox?

A Yes.

MR. DERN: I would like to introduce this as Respondent's next in order at this point.

MR. ORMIN: No objection.

MR. DERN: It will be Respondent's Exhibit C.

CHAIRMAN ORINGER: Can we see that?

MR. DERN: Yes. I am looking for an extra copy.

CHAIRMAN ORINGER: This is admitted as Respondent's Exhibit C.

Let's just pause for a moment so we can review this.

Off the record.

(Whereupon, a discussion was had off the record.)

CHAIRMAN ORINGER: By the way --

MR. DERN: Are you on or off?

CHAIRMAN ORINGER: It really doesn't matter. I just want to make sure that we have Respondent's Exhibit A.

MR. DERN: A is the motions, B is that memorandum, C is this Fox letter.

CHAIRMAN ORINGER: Thank you. Okay.

MR. DERN: Q Bill, let's go back to the times that you went on the lot. You have described the looping sessions. It is your testimony that you didn't engage in activities as far as specific rewriting; is that correct?

A I was there mostly as an observer.

Q Did you do anything in the way of making suggestions for script changes? Were there any script changes at the looping sessions?

A No, I am sure there weren't. It was word for word.

Q When did you go to the Fox lot the next time?

A I would like to correct something. Mr. Cutts reminded me there was another series of retakes, which I did not attend, was not present at. Lamont Johnson had early on said that he would not have one frame of film day-for-night in the picture. He insisted on night-for-night shooting. I argued very strenuously against this, and the cameraman stated his opinion. I am sure John Cutts stated his. We couldn't see anything. We were shooting out in the wilderness with Cinerama, which is very meagre, and sure

enough, after, I think, three nights of shooting the studio said, "We can't see anything except headlights." So they ordered him to reshoot day-for-night, which he did. But some of that was poor. They did, I think, a day's shooting of a couple of car stunts out at some ranch in the Valley in addition.

Now, the second time -- Well, there were at least two meetings that I recall regarding script changes -- I mean, editing changes. Jerry Henshaw had seen the rough cut and we were very disturbed by the first rough cut, which was very long and slow and so on. It took two months to get this first rough cut, during which time no one was allowed to view any of the film. Anybody in the studio, producers, anybody. And then we saw it and it was disastrous, in my opinion. Jerry Henshaw didn't like it.

Now, we had a meeting with regard to that and we had a meeting with regard to --

MR. PANAMA: May I ask a question? The 26th, the date of the memo, was after you saw the director's rough cut? Is that what you are referring to now?

THE WITNESS: There was a meeting subsequent to that. Now, maybe this was after viewing the second.

MR. PANAMA: Is this Henshaw's cut now? That's what I am confused about.

THE WITNESS: Henshaw didn't really take a hand in saying, "I want this, I want this, I want this" until much

later. We had a meeting, I think, before the strike began regarding this memo. But the memo was kept alive and was referred to repeatedly.

MR. PANAMA: You said there was a period of two months before you got the first rough cut. Was that the last two months and then the February 26th memo?

THE WITNESS: It took him two months after December the 2nd.

MR. PANAMA: Following the 26th memo, if you could clarify the cutting procedure from then on it would be helpful.

THE WITNESS: My recollection is that we had a meeting with Henshaw prior to the strike in which we went through it. He had seen the first cut and was unhappy about it, and Elmo Williams was there and the supervisor of post-production and all of the people that would normally be at one of these meetings. And he was unhappy, as were we, and we went through some of the things that should be changed and Lamont made some changes. And then I think the next -- All I recall is having to go to at least, and I am sure not more than, two meetings during the course of the strike with regard to subsequent cuts in the film. And I think one of these meetings followed a preview. I am not at all sure about that, but I think one of the meetings followed a preview in May. In other words, that was the next time I went, the next reason for going in. Now, there were three

or four sessions with regard to the editing.

MR. DERN: Q Let's get into those. Were there additions? Describe for the panel what you did at those sessions, what your role was.

A To the best of my recollection, in each of these cases, John not being a member of the Guild was in and I had to turn over to him most of the producer functions. On several occasions he would call me. He said, "They have done this, they have done this, they have done this. You have got to come in and see it," because he was unhappy or whatever.

Q Where were you during this?

A At home.

Q Were you ever on the picket line?

A Yes. Well, we can get to that in a minute.

Q Go ahead.

A John would call and I did go in, let's say, three times, go up and look at the given sequence, whatever that happened to be. As I say, the reshooting of the tag, I was there then. Then I got a call from Joe Rizan, executive producer, asking me or saying, "This is a terribly urgent meeting. You have got to be there. And we will discuss it when you get here."

The determination of credit had just come through, writing credit, that is. And prior to that before the strike I had a big bundle of all the scripts, the revisions, et

cetera, sent to the Guild with a letter, the usual form letter saying, "These scenes were written by Kirby." I listed the various scripts, the various revisions -- one, two, three, four, five, six, et cetera. I then ended up saying under Guild rules I did not think that Kirby had done sufficient work to qualify for credit.

Now, I don't know who at the studio -- now I am getting to that meeting that -- I don't know, but I suspect I know, but because I can't prove it, I don't want to say, gave a copy of my letter, which is presumed confidential, to Joe Rizan and Lamont Johnson. So Cutts, suspecting as I did that there were going to be objections to this, went along to the meeting. Well, I was denounced as being unfair and unscrupulous, et cetera, to deny this man credit, that I had forced the arbitration, et cetera. And I explained to them that it was an automatic arbitration, I had nothing to do with it. I couldn't start it, couldn't stop it, it was just going to take place. I said, "I do know that the decision was unanimous, because I called up Mary Dorfman and she told me."

Lamont Johnson was in top form. He was terribly angry and unstable. He said, "If you don't do something about this, I am going to take this to public print. I am going to go to the trade papers and denounce the whole thing," et cetera, which my first impulse was to say "Fuck you," but on second thought I called Mary, told her a few white lies,

saying, "Well, some changes have been made in editing." And she knew I was lying. "Would you set up a showing? Would you reopen the arbitration and set up a showing at some place and let the arbitrators come and see the film and then make their determination?" In other words, erase the first one, let them make a second one.

She said, "We don't do that."

And I said, "Mary, we are in a terrible bind."

Then she told me about the call from Lamont Johnson where he had been very insulting, so she agreed to do it.

The arbitrators went -- Well, it was unanimous. Instead of saying, "Written by," "Screenplay by," they were all having a chance to talk to each other. They came to the conclusion it should be "Written by," not "Screenplay by." Again it was unanimous. Just parenthetically, Lamont Johnson professed to having been satisfied with my having that showing. But anyway, he did go ahead and give an interview to Variety saying that the Guild runs its arbitrations badly, that he pissed on me publicly, and so on. All of this part of the whole thing between me and Cutts on the one hand and Johnson on the other. So I went in for that.

John called one day and said he was disturbed by some of the copy in the advertising, that it seemed to him corny or something, out of date, but he wasn't really a judge of that, "Please come in and look at it." So I did go in and

look at it. He was right, that there were certain phrases in it that were archaic as far as the South was concerned, actually could be offensive as far as the South is concerned, and there were changes in the advertising.

I think your son will testify to that.

Junior Johnson has been mentioned as a famous stock car driver. I spent a lot of time with Junior during the time of writing this, went down to North Carolina at my own expense and spent a great deal of time with him. We established a very close relationship with him, to the extent that he trusted me never to ask to read the script nor did he ever see the film. Finally the day came when we invited him to the studio, to fly to the studio, to see the picture. And I did go in on that day just not to see the picture but to greet him afterwards. And thank God, he liked it.

There were two previews that I went to, one in the Valley, one in San Francisco. And the only other thing I recall going in for was to clean up the office in the middle of June when we ended it. Those are the times that I recall crossing -- that is, going into the studio. Of course, there was not a picket line at the end there, but that's technical.

Q Basically, this was a running battle, I take it, between you and Lamont Johnson?

A It was, yes.

Q With you and John on the one side and he on the other as to how this film was going to end up; is that correct?

A Not end up.

Q Be finished. How it was going to look?

A How it was going to look. But the battles were constant prior to production and during production. Many, many disputes and great personal hostility developing as a result, which I think had a lot to do with his denouncing me, by the way.

I am a chronic memo writer and these memos were not addressed directly to him, they were addressed to Jerry Henshaw, and he was on the list of things that I though: were wrong.

I remember John telling me during production that the studio objected to the amount of swearing and certain other things, vulgarity in the picture. And they wanted a PG rating, quite logically. I wrote a memo addressed to Lamont, Joe, so on, everybody, stating the studio's point of view and making suggestions. I couldn't go to this particular showing of dailies -- this is while we were shooting the picture -- so John took the memo and --

Q This period of time is before March 6th?

A Yes. This is back in November, thereabouts.

John took the memo and Lamont read this and, as John said, in a jeering tone of voice and evoked a lot of laughter with the comments about the Nixon point of view, et cetera. But it was this kind of hostility, is the best word I can think of, that was created during that before,

during and after the making of the picture.

Q Is this the first picture that you functioned on as both producer and writer?

A Yes.

Q Was it important to you as a producer that this picture come out right?

A Well, yes. It's important to everybody. I think in reference to that, the date that I took the option on the material was January 1970 and it was not until two and a half years later that we had a deal. Now, I wrote and rewrote and rewrote, I changed agents twice. We went everywhere with this project. As I said, we almost had a deal at Fox and Zanuck was kicked out and that fell through. By the time we did get a deal, or at least an offer, from Fox, I had invested something like $9,000 of my own money and God knows how many months of time in labor. And the offer was an offer to purchase the script. They didn't want John or me as producers. They wanted to put on their own producer.

Now, this was probably our last chance to sell this thing, or at least it seemed like it at the time, but John and I consulted and said, "We have gone this far, we are going to say 'No.'"

I wrote Jerry Henshaw a letter, which I have here, citing a disaster I had in another circumstance selling a script to Universal and saying I didn't want that to happen again, and "I just don't want to turn it over to you. Let's

have a meeting and talk about it." So we did have a meeting. We managed to persuade him to hire us on a very bad deal, small amount of money to produce with the proviso that he could then put on an executive producer, which he did. But the point is -- I am trying to stress to you something I didn't convince you of, which is when you have developed something, spent a great deal of time on it, you have strong parental feelings on it. This continued right on through. And I thought we had a chance for a good picture. But, to restate, when I saw that first cut I was in dispair because it was so bad. And I think only because of the tremendous amount of pressure that was applied in forcing the studio to take steps in these memos that I wrote and the telephone calls and so on did the studio finally force Lamont into doing what he should have done originally.

Ultimately the studio took the direct hand, after Lamont left to go to Africa to make a picture, to do some of the steps that I talked about doing months before.

MR. DERN: I may have a few more questions.

Do you want to cross first or does the panel have questions?

THE WITNESS: Let me say one more thing. I did not go to any of the dubbing sessions, nor the scoring sessions, none of the other looping sessions. I went to none of the meetings with the foreign and domestic sales people, all of

which John did. There was a promotional tour which I would have loved very much to have gone on, all through the Southeast, which I didn't. John went on that. I can't think of all the things that John did. He would keep me informed by phone.

I think I told Eddie on the phone, I said, "I don't deny for a minute that I did these things, but you are not a member of the Guild all these years and having not ever violated a rule that I can recall that you want to violate this rule. It's only my feeling with regard to the picture in not trusting the director, in fact distrusting him, that on these occasions which I considered crucial that I did go into the studio." The advertising doesn't apply in that. That's a different matter.

MR. DERN: Q Let me ask you this question, because I know of your feelings about the Writers Guild. You also functioned as a member of the Strike Committee or as a picket?

A I wasn't a member of the Strike Committee. I did all my picketing assignments. I was assigned to Disney, and I performed the 6:00 to 9:00, 12:00 to 3:00. But I made no secret of this.

It was a rather ironic thing that happened. It was my assumption at the beginning that we would picket every week, so I told the picket captain, Phyllis White, there was a looping session coming up and I had to go and she was

astounded. I explained I was producer of the film and so on.

She said, "You better call the Guild. I can't give you permission."

I said, No, I am not asking you for permission, but I just want to tell you that with regard to next week."

I guess she was so confused she didn't think at the time that I didn't have to picket next week.

Anyway, I called the Guild and I talked to somebody. I think his name is Buchanan; I am not sure. He was thunderstruck.

"What are you telling me this for?

"I just won't be able to picket next week, but I will make it up.

"You are not scheduled to picket next week."

I said, "Well, okay." And we left it at that.

Subsequently I was shifted from Disney to Universal, where I am sure your records will show I was there every time required. Norman was the picket captain. I did that, for whatever that's worth.

I did one other thing. I withdrew a script that was on the market for sale. It's a self-serving statement, but I did that so the agent wouldn't be attempting to try to sell it to somebody. That's the extent of what I have to say.

Q You have been a member of the Guild for a long time. I won't repeat the years again. I presume you are pretty well familiar with what "writing" is. I am not

conceding for purposes of this question that you couldn't have written while you were there, but I know that you didn't want to write, and that was your feeling?

A No, I didn't.

Q Did you do anything which in your mind constitutes writing services during the strike?

A Not in my mind, no.

I am told that there is a definition of "writing" which is broad. I remember briefly being on a negotiating committee, not the last time but sometime in the past, and the question came up if an actor changes a line or a director changes a line during the course of production he has to join the Guild. I thought it was an absurd statement and I still do. But from my point of view, I was functioning as a producer.

Q You didn't add any lines, you didn't change any lines?

A No, none of that.

Q You didn't make any suggestions as to lines?

A I suggested editing, editing out.

Q Do you mean cutting?

A Cutting. Some of the stuff was so bad, the only way to correct it was to eliminate it. In that memo you will see I suggested some things, changes in juxtaposition of lines.

Q Were most of your suggestions made prior to

March 6?

A Yes.

Q They were basically encompassed in that February 26th memo?

A Yes. A lot of suggestions came from John Cutts, Joe Rizan took a hand. He hated this, hated that. "Let's cut it out." Lamont didn't like some things. Jerry Henshaw, too.

Q So it was normal cutting procedure?

A Yes. Parenthetically again, I have written I don't know how many pictures, that involved I don't know how long, and I have never as a writer been involved in post-production. I think it's an experience of most writers that once you finish a script they say, "Aloha, and don't come back." No one has ever asked my opinion about anything as far as I can remember in the post-production period, and this was an altogether different story. Assuming there was no strike, it's unlikely that they would even have shown the first part to me. Here at least I had the prerogative and the right to say not that it is terrible, but this is what should be done. You don't go around saying, "It's terrible," but the director had that impression.

Q Did you have that prerogative as the producer?

A Yes. I was there.

Q You were there as two people, in a sense?

A Yes. But as a producer you do have the prerogative,

which I had as the producer of a television series once, but never as a writer. And I think this is probably the experience of most writers.

MR. DERN: I may come back with a few more questions, but I don't have anything at this point.

Do you have any questions?

MR. ORMIN: In the normal course of events, as a matter of courtesy --

MR. DERN: I am sorry. I didn't know how you handled it.

CHAIRMAN ORINGER: We will proceed that way, but with the same understanding, if it is agreeable to everybody, that if any member of the Committee wants to interject a question, he may.

CROSS-EXAMINATION

BY MR. ORMIN:

Q Mr. Roberts, am I correct in my understanding of your testimony that you knew you were violating the Guild's strike rules but that you felt that you had to go to Twentieth Century-Fox in order to protect the integrity of the picture?

A Yes.

Q Then am I correct in making the assumption that you received the Guild's strike rules, the first rules dated February 20th and the second rules -- second version of them

dated May 1st, 1973?

A The original and the revised?

Q That's right.

A Yes; right.

Q And you also knew from the Guild's strike orders that you as a member of the Guild were prohibited from going to Twentieth Century-Fox?

A Yes.

Q And you knew the Guild had picket lines at Twentieth Century-Fox?

A Yes.

Q And you knew that in going to Twentieth Century-Fox you were passing a picket line, if not at that precise moment, it was within the spirit of the Guild's rules?

A Yes.

MR. ORMIN: I have no further questions.

MR. DERN: I move to strike the entire line of questioning. I wanted to let you finish. It does not pertain to his services as a producer. His answers are honest and correct, that he knew of the rules. The implication you have attempted to create is that he was violating the rules as a writer. He has testified that he was there as a producer. I want that whole line of questioning struck.

MR. ORMIN: Well, Mr. Chairman, at this point he is forcing me to give my final argument, which is the Guild's position. He says that this line of questioning is

irrelevant, and I will give it now so therefore I won't have to give my final argument later on before you give your ruling.

CHAIRMAN ORINGER: If you would like, as part of the response to the question.

MR. ORIN: Yes. The Guild's position is very simple. The Guild has issued strike rules and it says no member may go to the offices of a struck producer and render services. That's what Mr. Roberts is charged with. By Mr. Roberts' own admission he did do that. By Mr. Roberts' own admission, he went to Twentieth Century Fox and he rendered services. By his own admission, he went there at least ten or twelve times. There is nothing in the Guild's strike rules with reference to whether this Guild member is or is not a producer, is or is not a story editor, is or is not functioning in any other capacity. The Guild's rules are plain on their face.

Mr. Roberts has admittedly violated these rules, and therefore I think Mr. Dern's position is not well taken when he suggests that this line of questioning be stricken.

CHAIRMAN ORINGER: The Chair would like to hear back and rule separately on each of those questions and the answers to them.

(Whereupon, the record was read from Page 86, line 19 through and including Page 87, Line 15.)

CHAIRMAN ORINGER: The motion to strike is denied. Let's proceed.

Are there any questions by any members of the Committee?

MR. PANAMA: I would like to ask a couple of questions.

EXAMINATION

BY MR. PANAMA:

Q Bill, I think you know that I am a writer-producer and a writer-producer-director. The questions I am going to ask of you have to do with kind of a philosophical question in making pictures as to what is "writing" and what isn't "writing" in terms of editing.

I have been a writer-producer-director for over 20 years, and I have had power and authority in those three areas. This was your first job, and I don't think that you are probably aware of the facts in being called upon in your somewhat limited authority as a producer to make suggestions. I believe philosophically that is "writing," because I believe that editing is "writing." It is the eliminating or the adding or the shading of the written word, which in the case of yourself and myself, since we both write and do other things -- Let me ask the question another way.

Did you make suggestions after the previews and were they implemented? There were two previews?

A Yes.

Q It is in the nature of a general question, because I don't think you at this point said you were doing "writing."

A I remember very specifically with regard to the first preview of the film seemed slow.

Q I don't want the specifics.

A I said a general tightening would help.

Q You testified that you were called in three times and you spent some time at the Movieola. If you looked at the Movieola and you made suggestions, I assume some of them were implemented?

A As I say, John was pretty much in charge as producer. He would call me and say, "I would like your opinion."

One instance I recall was that Lamont said he would not have any stock footage in the film, but the studio and others felt that the race we photographed was a dull race. It was. We needed something to juice it up, so stock film was obtained. John called me and said, "The stock film has been put into this sequence. Will you come and look at it?" I did that. It worked fine.

Q What were the changes after Lamont left the picture? You said that you had either written a memo or had a meeting with Henshaw where you said that your suggestions were followed.

A Those changes, as I recall, were mostly Joe

Rizan's.

THE WITNESS: Didn't Joe take over at that point? Remember that morning?

MR. CUTTS: You added a few more music cues after Lamont left the picture. We added that and the demolition derby. It was just extra coloring that we did based on the audience's reaction. It was just shading, coloring.

MR. PANAMA: A producer alone making suggestions is a producer. When a writer is also a producer and he makes suggestions, he is making writer suggestions.

In this case you were the sole writer of the screenplay. In a sense, I am suggesting your inexperience with the sense that editing is "writing." That is a moot point. I happen to believe it.

MR. DERN: I think at this point you are obviously going to a tremendously basic issue in all of these hearings that have gone on. It's incumbent on me to bring the bargaining agreement in at this point, and I didn't bring a copy.

Do you have the collective bargaining agreement?

MR. ORMIN: I just happen to have a copy.

THE WITNESS: I can't deny you your assertion. I must say, in all honesty, I have never thought of editing as being "writing."

MR. CUTTS: Can I just again say something?

MR. ORMIN: Mr. Chairman, may we go off the record for

a few minutes so I can get another copy?

CHAIRMAN ORINGER: Yes, we can go off the record.

(Whereupon, a discussion was had off the record.)

CHAIRMAN ORINGER: Back on the record.

The Chair would like to interject at this point. I don't know why, and I am addressing this to the Guild, we are even getting into the whole matter of "writing." I am referring to the charge again, and the charge says nothing about writing. Why are we getting into this?

MR. ORMIN: Because Mr. Dixon Dern just brought it up, Mr. Chairman.

The Guild has since changed its position from what it asserted previously. At this point the Guild's position is, in accordance with what the charge has suggested, that we don't have to get into what is "writing" and what is not "writing." That our rules are broader than that and the charge is broader than that.

CHAIRMAN ORINGER: That is not what the Chair said. The charge has nothing to do with "writing," and it is up to the Committee to hear evidence on the charge and make a ruling. Maybe we ought to ask --

MR. DERN: Do you want to hear from me on that?

CHAIRMAN ORINGER: Please, yes.

MR. DERN: First of all, I want it understood that I am not conceding for purposes of the record that a supervisor who goes on a lot, a producer who goes on a lot can't also

write while he is there. I want that understood. That's not the situation here, so it is moot.

Mr. Panama raised the question as to whether or not editing constitutes "writing." It's a relevant question because we have already made our motions and our objections to the whole form of your charge. And I won't go through that again and argue your charge is improper. At best, you can raise, or the Guild could raise, a question as to whether or not a hyphenate had engaged in writing services while on a lot.

In view of that question I am going to read into the record the definition of "writer." I am not really going to read it, I am going to give it to him and let him copy it. I will read it. I am going to read into the record the definition of "writer" and what consititutes a "writer" as understood by the Guild itself in its collective bargaining agreement with the producers, and let's get it on the table and let's understand it.

CHAIRMAN ORINGER: The Chair will agree that it will be read into the record, but we are not going to make any comment that it is relevant or not relevant. We will just have to take this into consideration when we make our deliberations.

MR. DERN: What we can do first of all -- Let me stop a minute.

Off the record.

CHAIRMAN ORINGER: Let's go off the record.

Let's stay on the record.

MR. DERN: I will incorporate by reference in the record that portion of the 1970 Theatrical and Television Film Basic Agreement which is Paragraph B of Article 1. And I will incorporate that entire paragraph and will specify that the following services which are labeled (a) to (h) are services which "...shall not constitute such person a writer hereunder:

"(a) Cutting for time.

"(b) Bridging material necessitated by cutting for time.

"(c) Changes in technical or stage directions.

"(d) Assignment of lines to other existing characters occasioned by cast changes.

"(e) Changes necessary to obtain continuity acceptance of legal clearance.

"(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography.

"(g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.).

"(h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding

story or teleplay."

The balance of it is incorporated by reference.

CHAIRMAN ORINGER: How shall we proceed now? The material is in the record.

Do you have any further witnesses or do you wish Mr. Roberts to --

MR. MAHIN: I have a question.

CHAIRMAN ORINGER: Let's hear from Mr. Mahin.

Let's go in turn.

Norman, do you have anything further?

MR. PANAMA: No.

CHAIRMAN ORINGER: John?

EXAMINATION

BY MR. MAHIN:

Q Your conversation with Eddie North, was that the first time that you had any conversation with anybody in authority in the Guild? I don't mean like your picket captain about your working at Fox.

A Yes.

Q Did it ever enter into your mind that it might have obviated all this here if you had gone and asked for a pass and told them exactly why you were going to do this?

A I am glad you raised that. I am sure you were at the same meeting I was, the strike meeting, and an actor-writer stood up and said, "If I get a job as an actor, what

do I do?"

And Randy said, "You can't cross the picket line."

An editor stood up and said, "I am a writer and I am also an editor, and what do I do?"

And he said, "You cannot cross the picket line."

I knew exactly what the answer would be. And I could tell by Phyllis White's reaction and whoever it was I spoke to at the Guild, you know, that they wished I just hadn't said anything because it put them in a terrible position. I knew that the answer would be "No." Just "No," that's all, and I had to weigh that against what I --

Q Two years and the money and all. One more question.

When did you obtain Mr. Dern as your counsel?

A When John and I first formed our partnership. That was immediately --

Q He is your personal counsel?

A Yes. 1970, I guess, when we took the option on the material.

MR. MAHIN: That's all.

CHAIRMAN ORINGER: Jack?

EXAMINATION

BY MR. NEWMAN:

Q Do you recall the date when the film was finally edited?

A Finally edited?

Q In other words, when there were no other cuts, deletions or anything.

THE WITNESS: Was the film changed after the San Francisco preview?

MR. CUTTS: Yes, it was.

THE WITNESS: Was it?

MR. CUTTS: It was towards the end of May.

THE WITNESS: The end of May?

MR. CUTTS: Yes. These were not so much additions as extending sequences.

THE WITNESS: I don't recall seeing that. They weren't my suggestions at least.

MR. CUTTS: No. These were the studio's suggestions.

THE WITNESS: Oh, they were?

MR. CUTTS: Yes.

MR. NEWMAN: Q In the interest of fairness, aside from the numerous considerations of integrity involved with the film, were there any other extenuating circumstances that caused you to take the position that you took?

A Well, I think I dwelled at length on the attitude or the behavior pattern of the director, which "perverse" is a kind word.

I can give you an instance. The studio had told us all emphatically it must be a PG at least, no R rating for this picture. There was a scene -- this was on location --

in an apartment which we had rented, boy-girl scene in bed. Now, the copulation has taken place, now they are talking, and, specified in the script, covered up, et cetera. Perfectly innocent. And I arrived on the location something like two or two and a half hours after shooting had begun and everybody had been excluded from the apartment except the director, the sound man, the lights, the script man and the actors. I didn't know until they broke for a while that he had been shooting this scene with the actors entirely in the nude, uncovered, et cetera. John and I were very disturbed by this, knowing this is an invitation for an R rating. We talked to Lamont and said, "You have got to cover this. You have got to. You are in trouble."

He said, "Don't worry about it. Don't worry about it." Wouldn't discuss it.

Naturally the studio ordered him when they saw it to reshoot it. And then he became outraged and was ranting and raving about the Nixon morality and so on and so on. It's like a child inviting or somebody inviting himself to be slapped so he can be indignant against whoever slapped him. It was this kind of thing. Refusing to shoot day-for-night and doing the ending his own way and knowing that this was nothing that we had ever discussed. Loads of improvisations and that sort of thing, none of which remained in the film by the way. They were all bad. But this is the kind of thing that made me distrust him to the point where I wasn't sure

what he was going to do.

You know, I hate to bring this down to personal matters, but that's what it came down to, real hostility between us. John got even worse than I did.

Q Obviously he was on the firing line more often than you were; is that right?

A Before the picture started we invited Junior Johnson and his wife to come to dinner in North Carolina, in Charlotte. They live about an hour away. John and I in particular were trying to reassure Junior it was going to be all right, it was going to be an honest picture and not a dirty picture, and it was going to be fair and all this.

Lamont got rather pissed, and afterwards when we said goodbye to Junior and his wife turned on John in a savage rage and accused him of ass-kissing and making points and making commitments which he had no right to make. It just went on and on and on. John didn't hit him.

MR. DERN: Considering his height, I am glad he didn't.

THE WITNESS: Well, we needed a director.

MR. NEWMAN: One more question, Bill.

Q I didn't read the memo from Fox. I assume it is the same kind I got from Columbia and Warner's in relation to reminding you of your contract?

A I am told it's a form letter.

Q Do you recall if in that letter there is any promise to indemnify you for any legal fees incurred?

A I think so.

Q Any fines?

MR. DERN: I can answer it, Jack. It is a standard form, as I understand it. The letter contains an agreement to furnish Bill with a defense. Bill made his own decision that rather than be furnished with a defense by Fox that he wanted me to come with him to this hearing. And the letter does agree to indemnify Bill against any fine which is assessed and legally sustained, as I remember. I think that's the language. The letter will speak for itself, but I think that's what it says.

CHAIRMAN ORINGER: John, did you have another question?

MR. MAHIN: No.

CHAIRMAN ORINGER: Are there any other questions?

MR. DERN: I should make clear in response to that that because of Bill's decision I am here as Bill's attorney.

MR. NEWMAN: I understand.

CHAIRMAN ORINGER: All right. What would you like to do now?

MR. DERN: I would like to go home.

CHAIRMAN ORINGER: No other witnesses?

MR. DERN: No. We are closed.

MR. ORMIN: I would like to make a slight final argument.

CHAIRMAN ORINGER: We will have an opportunity for that.

I just wanted to ask if there was any further

evidence to be presented to the Trial Committee at this time by either party.

We will have time now for closing argument.

Mr. Orwin.

MR. ORWIN: Thank you, Mr. Chairman.

I will try not to repeat my former arguments.

The rationale behind the Guild's rules, why it says no member may go to a struck studio, and the rationale for not trying to limit it to writing duties is because the Guild is in no position to know what anybody does once they go within those studios. When somebody goes within those studios, there's a potentiality for great harm to the Guild other than the integrity in trying to successfully conclude a strike. Once you go into that studio, you can do all kinds of things, which one reasonable person will say is not writing duties and another reasonable person will say is writing duties.

In fact, Mr. Panama brought that out just now. Mr. Panama considers cutting writing duties. And this is the sort of potentiality for harm that the Guild is trying to prevent.

Mr. Roberts points out, of course, that he could have endured a great loss, but obviously every other member who wanted to strike endured a great loss. This was economic warfare, and people get hurt in economic warfare.

With the Trial Committee's indulgence, I hope

it will give me a minute to discuss this Theatrical Agreement which Mr. Dern brought into the record. It is the Guild's position that this Agreement and its various definitions is irrelevant. As I brought out before, the Guild's strike rules talks in terms of going to a studio that is being struck and rendering services. However, to the extent Mr. Dern said the Guild's own definition says these kinds of duties are not writing duties, Mr. Dern is wrong. He is addressing himself to Page 3, which is where Article 1 D is. And he is addressing himself specifically to the second paragraph numbered 2 in parentheses. That paragraph, which I don't want to read entirely, has what is known as a proviso. I will read the proviso. "...provided, however, that any writing services described below performed by producers, directors, story supervisors," et cetera, "...shall not be subject to this basic Agreement...."

By the definition here, it says these are "writing services." All this means here is that in effect a writer will not be paid for these services. This minimum basic agreement is an economic document that is the result of a struggle between the writers union on the one hand and the producers on the other. If the writers union had greater economic strength, it would have succeeded in saying and this is writing duties, and therefore you will get paid for it. It did not succeed to that point. Perhaps some day in the future it will.

Remember what this Trial Committee is doing here. This is not some kind of dispute between labor on the one hand and management on the other. This is an intra-union affair. As far as the Guild is concerned, it can say to its members, "What you have performed here are writing duties, and you may not perform them during the course of a strike." And it is irrelevant whether because of the minimum basic agreement he is getting paid for it.

Now, as I said, though, the Guild's basic position is that it is basically irrelevant. I am only addressing myself to Mr. Dern's argument who tried to say by your own jurisdiction it is excluded. It's only excluded in terms of pay, not in terms of the Guild's jurisdiction. I submit that every member of the Guild, or probably every member of the Guild, could have said to himself, "I have good cause to go to the studio and do what I need to do, and I know I am going to harm the Guild anyway, and I am not going to perform any 'writing' services." Well, if every member of the Guild were permitted to make his own determination, obviously the strike would not have succeeded. The only way that this Guild can be the functioning effective organization that it is is to have every member follow the duly promulgated rules. These rules were thought through quite thoroughly before they were issued. Before the Guild decided to go on strike all members went to meetings; they knew the problem. When you go to war you know the problems that are facing it.

And the members said, "We are going to do it." And it was the obligation of every member to follow these rules.

If every member said, "I can't do it because I have special circumstances," the Guild would be a completely ineffective organization. And I hope this Guild will remain an effective organization.

I have no more argument, Mr. Chairman.

MR. DERN: I am not really going to get into a long closing argument, because obviously, first of all, Paragraphs (a) through (h) of Article 1 B represent a history of negotiation and a definition of that has gone on for a long, long time.

I have been a party to some of these negotiations, I have been a party to others, as has Mr. Ormin. The areas that were crossed out in "writing services" as far as this Guild is concerned are the exceptions that are set forth in (a) through (h) of the collective bargaining agreement. And as to those services, the Agreement specifically says that the individual rendering those services, albeit a member of the Guild, is not to be treated as a "writer." Now, we are really on two levels here. Mr. Roberts was first in a writer capacity, which he basically completed at the time of completion of production of the film, but he was also the co-producer of this film. He had obligations to Fox and he was obligated under the agreement that he had to render services as producer on the film.

As I have indicated before, I am not conceding that if Fox had ordered him while on the lot to render writing services that he could have turned down that request. There are certain areas that indicate that a supervisor once on a struck location can actually render services that are being struck. We don't need to get into that case here, because we don't have that situation here.

Mr. Roberts' own testimony is that he rendered no services which are "writing services" as generally understood, with all deference to Mr. Panama, and that he did function on the lot during the period of the strike in his capacity as a producer. We have already made our motions, which are part of the record, to the extent that your charges are invalid, that we consider the proceeding improperly called and all the other reasons that are set forth in those motions.

The reason that we didn't rest at that point was that I felt this was a case, and Bill felt very strongly, where he should explain because he has been a Guild member for so long exactly why he went on the lot.

I don't disagree with Mr. Ormin -- we both practice in the labor field to a certain extent -- that a union could be hurt by members crossing picket lines. But a union which incorporates in its body both supervisors and nonsupervisors runs the risk of that the supervisors are going to be obligated to cross the picket line no matter what their own emotional feeling may be while doing it. And when

Mr. Roberts went on the Fox lot, he went on the Fox lot as a supervisor under a contract which required his services in a supervisorial capacity.

For these reasons, and I think because of the explanation that he has given you, I renew my motion that this proceeding as against Bill Roberts be dismissed.

CHAIRMAN CHAIRMAN ORINGER: The motion to dismiss is denied.

We will go into deliberation.

Is that all from both parties?

MR. ORMIN: I think I am going to have to insist upon my right to file a closing argument.

Once in an endeavor to cooperate with a Trial Committee I gave up certain statements and I was severely --

MR. DERN: Can I ask whether or not rebuttal argument is permitted under your rules?

CHAIRMAN ORINGER: Of course. That applies to all sides.

MR. DERN: Do you mean we could go on forever?

CHAIRMAN ORINGER: We can.

MR. ORMIN: Mr. Chairman, finishing my sentence, I was chastised for not putting the Guild's position on the record.

In terms of what Mr. Dern just said, normal procedure is that anybody who has the burden of proof has final argument. Obviously the Guild has the burden of proof.

I just want to address myself in terms of what Mr. Dern was saying in terms of supervisors. He was talking about matters concerning the National Labor Relations Board. It's completely irrelevant to this Trial Committee. This Trial Committee doesn't have to go into all those definitions. The Trial Committee is functioning within this union. It's an intra-union matter, and it has the right to go along and assume that the Guild's rules mean what they say. Whether any other forum says the Guild cannot do this is irrelevant.

Mr. Roberts by his own admission has broken rules and the Trial Committee should not go any further than that.

CHAIRMAN ORINGER: In fairness, we will permit the Respondent to reply.

MR. DERN: No, I don't think it needs any further discussion. I think the issues are there and you have denied my motion to dismiss.

I expected you to say what you said, Mr. Ormin. Why keep beating --

MR. ORMIN: A live horse.

MR. DERN: -- a live horse.

CHAIRMAN ORINGER: This matter will be taken under submission by this Trial Committee, and after this Committee has deliberated it will submit its written recommendation as to guilt or innocence along with its recommendation for disciplinary action, if any, to the Board of Directors, who under the Guild's Constitution and Bylaws have the authority

to either accept, reject or modify this Committee's recommendation.

In order for this Committee to make a recommendation of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the Respondent be acquitted of the charges.

There being nothing further, this hearing is adjourned.

Thank you, gentlemen.

(Whereupon, the hearing was adjourned at 1:30 p.m.)

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, BEN HYATT, Certified Shorthand Reporter, do hereby certify:

That the foregoing Proceedings in the Matter of WRITERS GUILD OF AMERICA, WEST, INC., versus WILLIAM ROBERTS was taken before me at the time and place herein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing 108 pages contain a true and correct transcription of my shorthand notes so taken.

Dated at Los Angeles, California, this _____ day of September 1973.

_____
BEN HYATT, C.S.R.

ORIGINAL

9 c 16 I

Intraunion Disciplinary Hearing

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.,

And

ALBERT RUDDY.

Tuesday, May 22, 1973
2:00 P.M.
8955 Beverly Boulevard
Los Angeles, California

Reported by:
PETER M. RUNKLE

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES, CALIFORNIA 90057
DU 1-3701

Intraunion Disciplinary Hearing)
)
In the Matter of)
)
WRITERS GUILD OF AMERICA,)
WEST, INC.,)
)
And)
)
ALBERT RUDDY.)
)
)

Tuesday, May 22, 1973
2:00 P.M.
8955 Beverly Boulevard
Los Angeles, California

BEFORE: Christopher Knopf, Arbitrator
Emmet Lavery
James Poe
Michael Blankfort
Nate Monaster

APPEARANCES:

FOR WRITERS GUILD: John A. Mendonsa
8955 Beverly Boulevard
Los Angeles, California 90048

FOR RESPONDENT: Loeb & Loeb
By: Albert F. Smith and
Saul N. Rittenberg
1 Wilshire Building, 16th Floor
Los Angeles, California 90017

I N D E X

W I T N E S S E S:

GUILD

STANLEY R. ROSS

	Page
Examination by Mr. Mendonsa	9
Examination by Mr. Smith	11
Examination by Mr. Blankfort	16

RESPONDENT

RICHARD MOYER

Examination by Mr. Smith	65 76
Examination by Mr. Mendonsa	70 82
Examination by Mr. Poe	78 80
Examination by Mr. Knopf	81

E X H I B I T S:

TRIAL COMMITTEE'S	RECEIVED
1	8
2	8
3	8

E X H I B I T S (Cont.):

TRIAL COMMITTEE'S	RECEIVED
4	8
RESPONDENT'S	
1	27
GUILD'S	
1	51
2	51

MR. KNOPF: I will call our meeting into session. The meeting will come to order. This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc. versus Albert Ruddy.

This matter is being heard before a Trial Committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, and myself, Christopher Knopf, Chairman.

All right, will the parties please state their appearance for the record. For the Guild --

MR. MENDONSA: John A. Mendonsa appearing for the Executive Director of the Writers Guild of America, West, Inc.

MR. KNOPF: For the Respondent --

MR. SMITH: For the Respondent, Albert S. Ruddy, the firm of Loeb & Loeb by myself. My name is Albert F. Smith, and also by Saul N. Rittenberg.

MR. KNOPF: Are there any other appearances to be made in this matter? All right then, this is a closed hearing. If there are any persons present in this room who are not herein representative of one of the parties or here to testify in this matter, we will ask that you leave at this time.

MR. SMITH: I might state for the record that Mr. Richard Moyer is here. He will be called upon to testify in the course of these proceedings.

MR. KNOPF: Thank you.

MR. SMITH: At this point, Mr. Chairman, before commencing with the taking of testimony, I would like to present to the Committee a series of motions which are addressed to the jurisdiction of the Committee to proceed with this hearing and which are addressed to various contentions concerning the legality of the proceedings and the alleged absence of due process, which is asserted on behalf of the Respondent Ruddy. I would like to make clear for the record that the motions which I am about to make on behalf of Mr. Ruddy are to some extent, but with several differences, similar in substance to the motions which have been made and which have been set forth on the record in the previous disciplinary hearing before this very same Committee, wherein the Respondent was Mr. David Victor.

I do not intend to restate the arguments in support of the representative motions, since I know that the arguments are quite clear in the recollection of the Committee, the prior hearing having taken place only yesterday. I would, however, go through the motions, and I am simply for the record in this proceeding stating the motions seriatim, and I would suggest that possibly the most appropriate procedure would be for the Committee to simply permit me to state each of the motions in sequence and then announce its ruling at the conclusion of the statement, rather than to interrupt each one, unless the Committee feels otherwise.

MR. KNOPF: I have no objection to hearing all your

motions. However, I do feel that there may be a time problem with one of our witnesses.

MR. MENDONSA: Yes, I have one witness in this case, and he has a time problem. He will have to leave here by a quarter of 3:00. We know that the motions are to be made. I would request that we at least get this man's testimony, which will be very short, and then hear the motions.

MR. POE: Are there nine motions?

MR. SMITH: I don't know the exact number. My notes are similar to those from which I addressed the Committee yesterday, and I would say that they will be substantially similar. The Committee will hear several -- very few -- additional motions that are particular addressed to Mr. Ruddy's situation, that simply were not applicable to Mr. Victor, but these will not be extensive. In deference to Mr. Mendonsa's requests, I will decree to delay the further presentation of motions, until the witness has testified.

However, I wish to make clear for the record that the motions are addressed to the jurisdiction of the Committee and are addressed to the absence of due process in the proceedings, and that by consenting to the presentation of the evidence, the Respondent does not in any sense waive its contention that this Committee has jurisdiction or that this hearing is being conducted in conformity with due process requirements, and I would assume that Mr. Mendonsa is willing to stipulate that the sequence of

time by taking the witness out of sequence does not in any sense constitute a waiver on the part of Respondent.

MR. MENDONSA: The Guild will so stipulate to that.

MR. SMITH: With that stipulation, I would then consent that the witness be heard before the presentation of the motions.

MR. KNOPF: Thank you. I will take a short moment for the introduction of the trial exhibits.

I have a copy and the cover letter sent by certified mail to the Respondent on 4-9-1973 with a signed returned receipt attached. I mark these as trial exhibits Exhibit No. 1. Is there any objection to the receipt in evidence of Trial Committee's Exhibit No. 1 at this time?

MR. SMITH: The letter of April 9?

MR. KNOPF: Yes.

MR. SMITH: No objection. No objection to the introduction of the exhibit.

MR. KNOPF: I marked as Trial Committee's Exhibit No. 2 a two-page letter requesting a continuance of the hearing dated April 23rd, 1973, addressed to John Mendonsa and signed by David Miller, Loeb & Loeb.

MR. SMITH: No objection, sir.

MR. KNOPF: I marked as Trial Committee's Exhibit No. 3 a one-page letter requesting a continuance of the hearing dated April 25th addressed to John Mendonsa and signed by David Miller, Loeb & Loeb. Is there any objection to the receipt into evidence -- correction.

I have one more exhibit. I will also mark as Trial --

MR. SMITH: Excuse me, Mr. Chairman. On a brief reading of the Exhibit 3, it would appear to me that the Exhibit is not concerned with Mr. Ruddy in that it refers to three named hyphenates. Therefore, I don't see the relevance of this letter of April 25th to the present hearing.

MR. KNOPF: Was this included accidentally?

MR. MENDONSA: No. It was not included accidentally. If you read the third paragraph, it reads in part "be postponed for no less than thirty days."

MR. SMITH: Very well.

MR. KNOPF: That seems to explain it. I have already marked it as Trial Committee's Exhibit No. 4.

MR. MENDONSA: Is it Exhibit No. 4?

MR. KNOPF: I'm sorry. I -- a two-page letter granting continuance to May 22nd, 1973 dated April 27, 1973 addressed to David G. Miller, Loeb & Loeb, and signed by John Mendonsa, Resident Counsel. Is there any objection to the receipt in evidence of Trial Committee's Exhibit 3? If there is no objection, they are received.

MR. SMITH: Mr. Chairman, I should simply state for the record, since we have taken our motions out of sequence, and I have consented that the proceeding go forward before the motions are made, that the absence of any objection to Exhibit No. 1, which includes the charges or the purported charges is in no respect a waiver on the part of the Respondent Ruddy to the contentions to be

raised in the motions as to the inadequacy of the charges. I assume that that is stipulated by Mr. Mendonsa.

MR. MENDONSA: So stipulated.

(Whereupon, the documents referred to were received in evidence as Trial Committee's Exhibits 1, 2, 3 and 4, respectively and are attached hereto.)

MR. KNOPF: Opening statements? Do the parties wish to make an opening statement?

MR. MENDONSA: Very briefly we will show that Respondent Ruddy did cross the picket line of this Writers Guild at Paramount Pictures Studios on or about March 14th and 15th of 1973 in violation of the working rules, specifically Strike Rule No. 12.

MR. SMITH: Well, in view of the fact that we are taking this proceeding with the witness to testify out of sequence, I will defer an opening statement, and I will incorporate the opening statement into the presentation of motions which will follow the testimony of the Guild's witness.

MR. KNOPF: Thank you. Mr. Mendonsa, will you proceed with your case?

MR. MENDONSA: Yes, we will call the first witness, Stanley R. Ross.

STANLEY R. ROSS,

called as a witness on behalf of the Guild, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q. Mr. Ross, will you please state your name for the record?

A. Stanley Ralph Ross.

Q. And you are a member of the Writers Guild of America, West, Inc.?

A. Yes.

Q. And approximately how long have you been a member of the Guild?

A. About nine years, I think. I'm not certain.

Q. You are aware that this Guild has been on strike against certain companies in the motion picture and television industries since March 6th of 1973?

A. Yes.

Q. And as a member of this Guild, have you had occasion to perform picket duty for the Guild?

A. Yes.

Q. And where have you so picketed?

A. In Paramount Studios and at Universal Studios.

Q. Directing your attention to March 14th of 1973, were you picketing on that date?

A. Yes.

Q. And can you tell us where you were picketing?

A. At the Windsor -- sorry, I believe it is called the Windsor Gate of Paramount Studios, which is just north of Melrose.

Q. And are you familiar with one Albert Ruddy?

A. Yes.

Q. Do you know him on sight?

A. Yes.

Q. And can you tell us how it is that you know him?

A. He produced a motion picture called THE WILD SEED many years ago at Universal, and I occupied the office right next to him where I was employed by Universal and had the occasion -- many occasions to speak to him and his director and his stars, and I got to know him, not that well, but enough to recognize him on sight.

Q. Now, again directing your attention to March 14th, 1973, did you on that date have occasion to see Mr. Ruddy?

A. Yes.

Q. And will you tell us under what circumstances that you saw Mr. Ruddy?

A. I was picketing at this particular gate, and he drove in in a red Ferrari, I think, or a Maserati, or some sort of Italian sports car, and waved to me, and I waved to him, and that was the end of that.

Q. You had no conversations with him at that time?

A. I said, "Hi, Al," and he said, "Hi."

Q. Now, directing your attention to the next day, March 15th, 1973, did you again picket on that date?

A. Yes, I did.

Q. And where did you picket?

A. The same place.

Q. And on that date, did you again have occasion to see Mr. Ruddy?

A. Yes. I can't recall if I saw him coming out on the 14th or going in on the 15th. I don't remember what my picket duty was -- if it was 6:00 to 9:00, 9:00 to 12:00 -- I do know that on one day I saw him going in. On one day I saw him coming out. I can't tell you exactly which date it was.

Q. But on one day, either the 14th or the 15th, you saw him going in or out, but on the other day you saw him doing the opposite?

A. Right.

Q. Did you have any conversation with him on the 15th?

A. No, I don't believe so. He was coming out that day. I think he just rushed right through.

MR. MENDONSA: I have no further questions.

EXAMINATION

BY MR. SMITH:

Q. Mr. Ross, you had no conversation with Mr. Ruddy on either of the two occasions on which you testified?

A. I didn't say that. I said, "Hi, Al."

Q. Other than that response, you had no conversation?

A. No.

Q. You didn't tell him or state to him in substance and effect that he should not be going into the studio or that he shouldn't cross the picket line or anything to that effect?

A. I held my picket sign directly up in front of me, almost as a cross to a vampire, to show it to him.

Q. Did you say anything to Mr. Ruddy in connection with holding up your picket sign?

A. No. I had been told that it was enough for me to hold the picket sign up in clear view, and I am six-foot-six. I make an excellent target and cannot be missed too easily.

Q. But you had no conversation with him in connection with this picket sign?

A. No, I did not.

Q. You don't recall whether he went in and out the first day or in and out the second day?

A. I would have to look at the -- I would have to look at my schedule, which I don't have. If I picketed there from 9:00 to 12:00, that was when he went in. It was the day that I picketed from 12:00 to 3:00, I believe, that he went out.

Q. How many pickets were picketing at any one time, as you remember?

A. Well, there was as many as four. At the time that I saw Al Ruddy there were two. Both times that I saw Al Ruddy there were two.

Q. How long was your tour of picket duty on each occasion?

A. Three hours.

Q. Would that be true as to all picket duty?

A. I have no idea.

Q. Did you ever find yourself picketing during a three-hour term when you were the c[illegible]picket on duty for that area?

A. No.

Q. There was a[illegible]ys another picket?

A. Always another picket.

Q. Did you ever arrive for your tour when there wasn't another picket to relieve?

A. To relieve?

Q. To relieve.

A. No. The only time I arrived for a tour when there wasn't another picket was at 6:00 a.m. in the morning, and I was the first picket. I arrived at ten of six.

Q. Was it your testimony that everytime you arrived to picket other than at the 6:00 a.m. tour, that there was another picket to relieve you?

A. In other words, my relieving somebody else?

Q. There was another picket on duty at the time you arrived other than at 6:00 a.m.

A. Yes. There was a picket on duty every time.

Q. On every occasion?

A. To the best of my recollection, yes.

Q. At Paramount?

A. At this particular gate at Paramount.

Q. At your particular tour?

A. Yes, at my gate.

Q. At Universal?

MR. MENDONSA: That is irrelevant.

THE WITNESS: Well, I can tell you I picket on Saturdays at Universal, and they start picketing at 9:30 in the morning, and I am usually the first person there.

Q. BY MR. SMITH: Have you ever arrived during any of your picketing at either Universal or Paramount at any gate where there was no picket before you arrived, other than the first tour at 6:00?

A. No.

Q. Now, you, of course, don't know what Mr. Ruddy did when he got into the studio?

A. No.

Q. You don't know, for example, that he was rendering any writing services in the studio, do you?

A. No.

Q. You don't know one way or the other?

A. My job was to remember people, and I know that Albert S. Ruddy belonged to the Writers Guild.

Q. Do you know whether he is a current member?

A. No, I cannot. I would assume -- well, I just don't know. I would assume nothing.

Q. Are you a television writer or a screen writer?

A. I am in both branches. I am a screen writer as well as a television writer.

Q. And you are generally as a result of your profession knowledgeable as to the functions of various persons in the industry; isn't that so, sir?

A. I would say more yes than no.

Q. Well, you know that Mr. Ruddy is among other things a feature film producer, do you not, sir?

A. Yes, I do.

Q. And do you know among other things he was producer of a film called THE GODFATHER?

A. I know among other things he created something years ago as a television writer.

Q. Mr. Ross, isn't it a fact that at this stage of time, Mr. Ruddy is known in the industry as a feature film producer; isn't that a fact, sir? I'm not talking about what he might have done six or eight years ago, but at this current time, this year, and last year.

A. Yes. I would say that I know him to be a feature film producer.

Q. And isn't it a fact, sir, that he is so known in the industry? Isn't that, from your knowledge as a professional?

A. I can't speak for anyone else. I would assume just as many, many motion picture producers like Joe Rosen and other people who produce motion pictures are always trying to get into the television field as television producers. I don't know if he produces things for television. I don't follow his career. I have enough trouble following my own.

Q. I thought you testified that you knew Mr. Ruddy quite well so that you are able to recognize him.

A. I didn't say, "quite well." That is your word. I said that I knew enough to recognize him quite well.

Q. What year was it that you had an office next to Mr. Ruddy?

A. It would be the years that he produced THE WILD SEED, also known as DAFFY. I guess it is '62 or '63. Over the years since then, I have seen him on several occasions, always being very pleasant ones. I have seen him out at the Safeway Market. I have seen him at various industry functions, just to nod and smile, just as I nod and smile at a lot of other people. I also saw him at the Academy Awards, which I attended, and that just corroborated my feeling that that was Albert S. Ruddy.

Q. Now, at the Awards, he was a recipient for an award?

A. Yes. I cheered for him, because I thought he deserved it.

Q. And he received that award in the capacity of a producer?

A. That's correct.

MR. SMITH: That is all I have.

MR. MENDONSA: I have no further questions.

MR. KNOPF: Any questions?

EXAMINATION

BY MR. BLANKFORT:

Q. I think you said that Ruddy replied to your "Hi, Al"; is that right?

A. Yes.

Q. He just said, "Hi, Stanley," or something?

A. I don't remember if he said, "Hi, Stanley," or what.

Q. You held up the picket sign?

A. Yes, I did.

Q. So there was no doubt in your mind that he saw you past the picket sign?

A. Past the picket sign?

Q. I mean, where did you hold up the picket sign?

A. I held it like this. In other words, from your point of view, here is the picket sign, and here am I. I held it up in front of a lot of people like that.

MR. BLANKFORT: Thank you.

MR. KNOPF: Mr. Ross, thank you very, very much for your time.

THE WITNESS: A short time. Thank you.

(The witness was excused and left the conference room.)

MR. KNOPF: Do you have any objection, Mr. Mendonsa, returning to Mr. Smith and his motions?

MR. MENDONSA: No. That is fine.

MR. SMITH: Mr. Chairman and Members of the Committee, at this point on behalf of Respondent Albert Ruddy, I would like to address the Committee with a series of motions and applications.

MR. KNOPF: Mr. Smith, would you like us to hear them all in toto first or one at a time?

MR. SMITH: I think in view of the similarity of the contentions to those raised during Mr. Victor's hearing that

it might simply be more expeditious if I went through each one in sequence, rather than requesting the Committee rule on each one, and then you can consider them all at the end.

MR. KNOPF: Would you number them as a courtesy and perhaps try to give them some sort of heading?

MR. SMITH: Yes, I will attempt to do that.

The first motion -- again I will be brief, because I feel that the Committee has a clear recollection of the rather extended argument that was made when many of these motions were submitted in connection with Mr. Victor's hearing.

I would incorporate by reference in support of the motions all the arguments that were made in support of the same motions in connection with Mr. Victor's hearing, in order to simply avoid repetition and in order to avoid the necessity for burdening the Committee with listening to it and burdening the cost of the transcript of these respective hearings.

MR. MENDONSA: I would not object on that, as long as we not only include the arguments in support of that, but in opposition to it.

MR. SMITH: I certainly would agree.

MR. KNOPF: Mr. Mendonsa, would you like to take these in order or take them after you have heard all fifteen?

MR. MENDONSA: I would just as soon hear them all, and if any additional argument need be made, we can make them at the end, unless along the way it gets complicated or bogged down, I will reserve my right to change my mind.

MR. SMITH: Motion No. 1, gentlemen, I would move to dismiss the proceeding on the ground that the charges against Mr. Ruddy were never served as required by Article 10 of the Guild's Constitution, which in loose and very summary form in Section 1 of Article 10, as the Committee knows, requires that the written charges against a member be filed with the Executive Director, and the article proceeds to require service upon the member of the written charges.

The charges against Mr. Ruddy were never served on Mr. Ruddy, because on its face the document which has been admitted in evidence as Guild Exhibit 1, a notice of disciplinary hearing, is simply a third-hand recitation of what the charges were, the notice being signed by Mr. Mendonsa as Resident Counsel of the Writers Guild, and on its face it is obviously not the charges to which reference was made in Section 1 of Article 10. I therefore submit that there has been a clear violation of the procedure set forth in Article 10 of the Guild's Constitution and By-Laws, and on behalf of Mr. Ruddy, I would submit that because there has been no service of the charges, this proceeding is without jurisdiction to go forward, and that the only way to cure this defect would be if the charges themselves, those charges which were initially delivered to the Executive Director -- those charges be served upon Mr. Ruddy, and then the necessary 15-day period for the scheduling of this hearing taking place before the Committee can go forward. I therefore move to

dismiss the proceeding because of inadequate or improper service of the charges.

Motion No. 2, gentlemen, I would specifically move on behalf of Mr. Ruddy -- and this, gentlemen, is a motion which was not made in connection with Mr. David Victor, and for this reason only I will be somewhat more detailed in arguing this motion, since it has no prior statement in the Victor hearing, since, as you will soon appreciate, what I am about to say was not applicable to Mr. Victor. In the case of Mr. Ruddy, we have a purported attempt to discipline a member who is not a current member of the Writers Guild, and as the record will show -- and I am anticipating the evidence, but I think for purposes of this motion, the Committee can take notice of the internal records of the Writers Guild itself.

As the record will show, the only writing credit that Mr. Ruddy has received since the year 1965 was a single credit in the year 1971, referring to a pilot for a series entitled THE THUNDER GUYS. This is Mr. Ruddy's only credit during the past eight years, as a result of which Mr. Ruddy is not qualified to be a current member of the Guild. As the Committee will recall, to be a current member you have to obtain six units period within any of the three proceeding years, and Mr. Ruddy is not a current member of the Guild.

Moreover, the official membership card identifies Mr. Ruddy as a non-current member. The significance of this, gentlemen, is that a non-current member

under the Article 4, membership article of the Guild's Constitution and By-Laws and it's a rather complicated article, and I won't attempt to quote lengthy segments from the article, but the end result of the article. I am sure Mr. Mendonsa will agree with my conclusion, as I construe it.

MR. MENDONSA: What are you construing?

MR. SMITH: I am referring to Section 7, Paragraph D of Article 4, membership. A non-current member such as Mr. Ruddy is not entitled to vote and did not have a right to vote on the adoption of the Strike Rules of which he is now charged with violating. The section is more complicated. It states things which a non-current member may be able to vote on, but it follows from there that as a logical conclusion that Mr. Ruddy as a non-current member did not have the right to vote upon the Strike Rules.

So what we have here is a situation of a non-current member of the Guild who has only one writing credit according to the Guild's official records, a credit in 1971, and then the credit goes all the way back to 1965, who also did not have a right to vote, and this non-current member, gentlemen, is now charged with a violation of rules on which he had no right to vote, had no voice in the adoption thereof, and I would submit that this is a patent absence of due process and an absence of jurisdiction on the part of this Committee over this non-current member. I think it is of the essence of due process that an individual be given an opportunity to be

heard or to have a vote on a procedure wherein he is thereafter subject. We have a man who had no alternative, had nothing to say, couldn't vote on the Strike Rules. They were adopted by others, and now he is being charged with a violation thereof, and I would submit that elementary due process requirements are violated in this situation, and therefore I would move -- and this will be Motion No. 2 in the case of Mr. Ruddy to dismiss the proceedings for the reasons which I have stated.

In view of the fact that this is a new motion, Mr. Mendonsa, would you prefer to respond to this at this point, or should I continue with the statement of the remaining motions?

MR. MENDONSA: Continue. I will respond later.

MR. SMITH: Fine. Going forward, gentlemen, with Motion No. 3, which is addressed to the distinction between the charges as set forth in the purported notice served upon Mr. Ruddy and the position which was taken by the Writers Guild in the answer which it filed before the Labor Board, I am aware of Mr. Mendonsa's statements on the record yesterday to the effect that the answer is going to be amended. However, my objection, gentlemen, is based upon the right of the Respondent to be able to prepare a defense to what is clearly an ambiguous charge, at the time that the charges were served upon Mr. Ruddy.

Thereafter this answer was filed by the Guild, and the position that was taken was set forth by the Guild at that point, and I submit that even if the Guild

now attempts to cure this by a later amendment to its answer, the fact is that at a point in time when Respondent Ruddy was preparing his defense to this proceeding, the Writers Guild was on record that they sought to dissuade members from crossing picket lines "to perform writing work", and that was the position which the Guild took before the Labor Board at a point in time when Mr. Ruddy was preparing his defense.

I would submit that that created an ambiguity, that Mr. Ruddy is entitled to a clarification of that ambiguity, and, Mr. Chairman, Mr. Ruddy thus moves for such a clarification and moves for a continuance in order to be able to be in a position to properly prepare his defense to the charges after they have been clarified.

I would, of course, also add that the clarified charges then become the outstanding charges, and the requirements of Article 10 would have to be met with all of the time requirements set forth therein after the clarified charges would be served on Mr. Ruddy.

Continuing now with Motion No. 4, gentlemen, Article 10 which covers disciplinary proceedings under the Guild's Constitution, Section 6 thereof, requires that after the charges have been served upon the member and after a place of hearing has been designated, "The Executive Director shall present to the Committee the charges and any evidence with respect thereto."

I would submit, gentlemen, that there is a clear violation of this requirement, that there is no

implication in the disciplinary sections of the Guild's Constitution that this authority can be delegated. I am aware that the argument has been made that clearly the Executive Director can delegate anything. I think that if we read into the Guild's Constitution a blanket right of delegation, that any responsibility that is given to any official reduces to a meaningless clause, if that official can simply delegate it. So if there is a given responsibility that is delegated to the President or to the Board or to the Executive Director, and if we read into that -- but, of course, they can delegate it to anyone -- it would follow that a cleaning woman at night can do anything the Executive Director is supposed to do, because the Executive Director, of course, has the authority to delegate it. I submit that a clear unequivocal statement in Section 6 of Article 10 that the Executive Director shall present the charges and any evidence to the Committee is not a delegable function, and the absence of the Executive Director in this proceeding is a patent violation of the Guild's own Constitution, which I will remind the Committee is in effect a contract between the member and the Guild, and the Guild has to live up to its end of the contract as much as the member is obligated to live up to his responsibilities thereunder.

I therefore move to dismiss the proceedings because of the absence of the Executive Director in conformity with Section 6 of Article 10.

The next motion, Motion No. 5, I believe, I would

move, gentlemen, to dismiss these proceedings because the proceedings themselves are illegal being conducted in violation of the National Labor Relations Act, and, of course, because the proceedings themselves are illegal, the Committee, this Trial Committee, can have no jurisdiction over Mr. Ruddy.

Mr. Ruddy has now been established in the testimony that has been heretofore given as a theatrical feature film producer, as so testified by Mr. Ross, so we have before the Committee a producer, and I submit that Mr. Ruddy's reputation in the industry is something of which this Committee can certainly take notice. Mr. Ruddy produced a motion picture which won the Academy Award at the last Academy Award presentation. Mr. Ruddy is at this point in his career a very successful, very well-known feature film producer, and I would submit in view of the fact that he is a nationally-known producer, certainly a industry-wide known producer, and in view of the fact that he is not a current member of the Writers Guild, in view of the fact that he has only this one writing credit during the past eight years, and that for simply creating in collaboration with another writer a pilot for a series, that we have a situation here, gentlemen, where the Committee is attempting to assert its jurisdiction over a producer.

A producer is a supervisor by definition. I won't reread into the record the definition of supervisor set forth in the National Labor Relations Act, but for the reasons that were stated in much more detail during

Mr. Victor's hearing, the National Labor Relations Board and the Courts have held that it is unfair labor practice under Section 8(b)(1)(B) of the National Labor Relations Act for a labor union to attempt to impose discipline upon a supervisor. Authorities in support of that were cited in the record during the hearing wherein Mr. David Victor was the Respondent at which this Trial Committee presided. I will not repeat those authorities, since they have heretofore been called to this Committee's attention.

But those authorities, I would submit, gentlemen, establish unequivocally that the present law is that a union has no legal right to impose discipline on a person who functions in a supervisory capacity and that statement of the law, gentlemen, was in fact acknowledged and conceded by the Special Counsel to the Guild, Mr. Charles Hackler, who was described by the Guild as a preeminent attorney in the labor law field and who in a memorandum which I submitted to this Committee during the David Victor hearing, a memorandum subject Strike and Discipline dated April 9, 1973, which described the current state of the law and stated that the present membership of the National Labor Relations Board "decided that the disciplining of supervisors as defined in the Federal Act for such anti-union conduct was improper."

I submit, gentlemen, therefore that the Guild's own attorney in a memorandum to the Guild has advised the Guild, and the Guild itself has stated to its membership in its own memorandum dated April 10th, 1973, a copy of which

was distributed to the Committee, conceded that there is no legal justification for the imposition of discipline upon a person who functions in a supervisory capacity, that this Committee is engaged in a proceeding which the Guild's own general counsel concedes to be unlawful, and because it is unlawful and in violation of the National Labor Relations Act, there can be no jurisdiction over Mr. Ruddy, the present Respondent, and I move to dismiss this purported disciplinary proceeding on the ground of such illegality in absence of jurisdiction. I believe that concludes Motion No. 6.

MR. MENDONSA: Mr. Smith, do you intend -- that will be 5. Do you intend to introduce into evidence the documents just referred to of April 9, 1973?

MR. SMITH: Yes. I will introduce it into evidence as part of the presentation of the Respondent's case.

MR. MENDONSA: All right. May we have a ruling on that then? We will have no objection to its admission.

MR. KNOPF: Fine.

MR. MENDONSA: So it will become Respondent's 1.

(The above-mentioned document was so marked.)

MR. POE: And that is Exhibit 5?

MR. SMITH: Respondent's Exhibit 1.

MR. MENDONSA: Right.

MR. SMITH: Now, Respondent's Motion No. 6, gentlemen, is an alternative to Motion 5, and for the reason stated heretofore in support of Motion No. 5, the Respondent now

moves for a continuance of these proceedings until the completion and determination of the proceedings presently pending before the National Labor Relations Board, in that the National Labor Relations Board has charged in the complaint issued by the Board that the Writers Guild is pursuing unlawful activity in an unfair labor practice in attempting to impose discipline on supervisory personnel. That very charge by the Writers Guild to which the -- by the National Labor Relations Board to which the Writers Guild has responded and which is presently on trial before the Labor Board, presents precisely the very question of the legality or illegality of the present proceedings.

Well, of course, the Respondent submits that existing legal precedent is itself sufficient to establish the illegality of the present proceeding. It cannot be questioned that the present proceeding is directly involved in the trial now going forward before the National Labor Relations Board. As a result of that, a ruling by the Board adverse to the Writers Guild to definitively establish that this very proceeding is unlawful constitutes an unfair labor practice. Therefore, gentlemen, what the Committee is now doing, and what all of us participating in these hearings are doing, is going forward with a procedure which may be held illegal by the National Labor Relations Board.

For this reason, gentlemen, I would submit that we should continue this hearing and all of the parallel hearings until a determination of the proceedings now before

the Labor Board wherein the very legality of this proceeding is in question. Therefore, in Motion No. 6 I move to a continuance of this trial until the completion and determination of the trial now going forward before the National Labor Relations Board.

Motion No. 7. Gentlemen, I would move to dismiss the present proceeding as beyond the jurisdiction of this Committee, in that Mr. Albert Ruddy, who has now been established in the testimony as a theatrical feature film producer, is performing a type of service as a producer which is outside the jurisdiction of the Writers Guild. Here, gentlemen, we have documentary evidence that Mr. Ruddy is not currently a writer He is a non-current member of the Guild. He has no current writing credits. He has one credit since 1965, an eight-year period, and yet by this disciplinary proceeding the Guild is attempting to act and to assert its jurisdiction with respect to an activity or a service, to wit, producing, as to which this Guild is not the certified exclusive bargaining representative, and, gentlemen, this Guild has no jurisdiction over Mr. Ruddy as a feature film producer.

For the reasons stated, I move to dismiss the proceeding on the ground of an absence of jurisdiction.

Motion No. 8, gentlemen, I move to dismiss on the ground that the panel constituting this Trial Committee cannot possibly act impartially in the present proceeding with deference to the individual members of this Committee as eminent members of their profession. The fact is that

this panel consists not of the rank and file of the Writers Guild but rather the elite of the Guild, individuals who have been closely identified with the Guild for many years and in some cases have held the highest positions in the Guild or in the radio and television branches or theatrical film branches of the Guild. Though I do not in any way suggest that the members of the Committee are not honorable men, fair and honorable in all respects, I simply would suggest that due process requires that the accused, Mr. Ruddy, should be tried before a panel constituting the rank-and-file members of the Guild rather than a blue ribbon panel consisting of the elite of the Guild. Such panel, I would respectfully urge, simply cannot be dispassionate and objective, simply cannot afford a fair trial to Mr. Ruddy, and for that reason I move to dismiss the proceedings or to have the proceedings rescheduled before another panel constituting a more representative selection of Guild members, rather than the elite of the Guild.

Motion No. 9, gentlemen, which is distinct from the preceding motion and somewhat, however, analogous in the context of the existing strike, I would urge that no member of the Guild, even the elite of the Guild, or any member of the Guild can be an impartial hearing officer and only a third party from outside the Guild could attempt to act impartially while the strike is in progress. As long as this strike continues in effect, then the Guild is attempting to enforce its strike rules.

The fact is that the Guild simply cannot afford to have any of its members found innocent on disciplinary charges, because such a finding of innocence would have an adverse impact on the progress of the strike itself. In short, gentlemen, I submit that no Guild member and certainly not those members of this Committee, long associated with the Guild and Guild activities can act impartially during the pendency of the strike.

Since the essence of due process is a fair hearing before a totally impartial Board having no conceivable interest in the outcome or the result other than to simply find, dispassionately find, an objective decision, come up with an objective decision, the only way that an accused member could be afforded a full hearing would be to constitute a committee outside the Guild or to postpone the hearing to a date after the strike terminates where the possibility of an acquittal would not threaten the success of the strike itself.

So I move to dismiss the proceedings for lack of due process, if they are to proceed before the present Committee, or in the alternative I move to continue the proceedings to a date in the future, after the termination of the strike. And that would be Motion No. 9.

Motion No. 10, gentlemen, is specifically addressed to the participation in this hearing of the Committee's Chairman, Mr. Knopf. Mr. Knopf, however an honorable and fair gentleman, nevertheless has been so closely identified with the hyphenate issue in connection

with the litigation presently pending in the Superior Court of the State of California for the County of Los Angeles and presently pending in the Court of Appeal, a case in which Mr. Knopf was the plaintiff with four other hyphenates, in which Mr. Knopf as plaintiff sought a declaration of the Court that would have invalidated the Collective Bargaining Agreement between the Association of Motion Picture and Television Producers and the Producers Guild of America, the sort of declaration which would have held the Producers Guild of America to be an unlawful and not a bona fide collective bargaining organization, a litigation which sprung from and concerned the conflict between the Writers Guild and the Producers Guild over the jurisdiction of hyphenate writer-producers, and a litigation which directly focused upon the right of the Producers Guild to direct its producer members not to honor the Writers Guild picket lines in order to perform producing services during a strike called by the Writers Guild.

In view of the fact that that very issue was at stake in the Knopf litigation, and in view of the fact that Mr. Knopf as individual plaintiff brought this suit and sought the Court's declaration that the Producers Guild's position was incorrect, that the Producers Guild was illegal and improper, not a bona fide collective bargaining organization, I would respectfully submit that Mr. Knopf is too closely associated, too closely identified with the conflict between the two guilds, is too closely identified with the Writers Guild's position and against the Producers

Guild's position, that he can't possibly act impartially as Chairman or as a member of this panel. Just to illustrate this by one simple point, assume, for example, Mr. Ruddy or any other producer hyphenate who was called before this Committee should testify in defense that he was told by the Producers Guild, his Guild, that he should cross a picket line, well, obviously that issue should be weighed impartially and objectively by the Committee, and yet Mr. Knopf has taken a position officially as plaintiff in a lawsuit that the Producers Guild is an illegal, improper collective bargaining organization. I would respectfully submit that Mr. Knopf simply cannot be fair and impartial and that, for this reason, his presence on the Committee is improper, and I would move that Mr. Knopf be disqualified and that, because of his disqualification, the Committee be reconstituted, and that the hearing be continued before another Committee which does not include Mr. Knopf. That will end Motion No. 10.

The final motion, gentlemen, is Motion No. 11. I would move to dismiss the present proceedings by virtue of the lack of due process that is inherent in the situation when these proceedings are going forward in the context of the inflammatory, sensational publicity that has attended the pending Writers Guild strike. I am sure the Committee is familiar with the spectacularly phrased trade paper articles that have accused the hyphenates who have crossed the picket lines in most imflammatory terms. Some of these quotations from the headlines were read into

the record during the David Victor proceeding, and I would incorporate them by reference in the presentation of this argument. I would simply submit that in this inflammatory context and in the light of the sensational press coverage of these hearings, no fair hearing is possible. I would submit respectfully, gentlemen, that due process requires that the proceeding should be dismissed or continued to a date after the strike date, after all of the labor conflict is finally put to rest, a date when tempers are cooled, a date when rational men can look back dispassionately on historic events rather than being caught up in the ground swell of current activity in the pendency of the strike and the Guild's self-interest in the disciplinary proceedings as an intrinsic part of their strike efforts. The fact that the Guild's strike efforts would be severely damaged by acquittal of the accused members and the attendant publicity that such an acquittal would generate, all of these facts present a framework in which no fair hearing is possible for Mr. Ruddy.

Due process is patently violated by the circumstances attending the timing of this hearing, and for that reason I would move respectfully to dismiss the proceedings.

I believe that that completes the series of motions which --

MR. KNOPF: Strictly on motions to dismiss or continuance, Mr. Mendonsa --

MR. MENDONSA: Yes. We will take them in the same

order. I am going to rely very much on the arguments that I made in the David Victor case in opposition to the motions and which have been incorporated in this hearing.

But there are just a few comments that I do wish to make. With respect to the first motion, that the charges were not properly served, I only say that it is a question of interpretation in reading Sections 1 and 5 of the Guild's Constitution and questions of interpretation or application of the Constitution are to be cited by the Board of Directors under Article 3, Section 2, Subsection K of the Constitution, and the Board, by proceeding in the manner in which it has, has in effect interpreted and applied its interpretation to Sections 1 and 5 of Article 10.

In any event, Mr. Ruddy was not denied due process by failure to have been served with the charges. He was in fact served with the charges that were brought against him. I made a representation in the David Victor hearing, and I will make it again at this hearing, that I was not a part of this decision but sat in on all Board of Directors meetings including the one in which charges were brought on David Victor. The charges that were sent over my signature to Mr. Victor are in fact the charges that were brought by the Board. He was served those charges with ample time to proceed to his defense. One extension of time, I believe, in this case was granted at the request of Mr. Ruddy's representatives. With respect to the second motion, it was the new motion to dismiss

because Mr. Ruddy is not a current member of this Guild. It should be pointed out that a current member of this Guild relates not to whether or not this person is active in the Guild as a member, but simply is one of four classifications of membership. These are set forth in the Constitution and By-Laws.

It seems to me ludicrous to assume that this Guild only has authority to discipline members in its highest category. If a man is a member of this Guild, he is subject to the rules of this Guild and the rules of membership for this Guild. The fact that he has not received but one credit in eight years may be true. We intended to show his work record and credit record. The fact of the matter is, though, the record will show that he has been a member for several years. He has maintained his membership in spite of the fact that he may not have any writing credits. He has thereby gained all the rights of a non-current member, as it stands now of any non-current member in this Guild, which are set forth in the Constitution and By-Laws. He has all the benefits of any other member of this Guild in his classification.

With respect to the third motion, Mr. Smith points out that the Guild's answer to the National Labor Relations Board complaint in the hearing that is now pending before the National Labor Relations Board somehow included the Guild's charge against Mr. Ruddy. I may point out that the answer to the National Labor Relations Board complaint was not sent to Mr. Ruddy. The charges were

sent to Mr. Ruddy. No request for a clarification has been made by Respondent prior to this date for a clarification. A clarification would have been forthcoming had such a request been made. Also, as I stated in the record prior to the making of that motion by Mr. Smith, a stipulation had been entered also to amend the complaint or to the answer in such a manner that would not conform with the answer to the charges, in fact, that were sent to Mr. Ruddy.

Mr. Smith has moved for a clarification. The clarification will now be given. Those charges are in fact accurate that were sent to Mr. Ruddy on April 14th of 1973. I do not believe that this Committee should grant a continuance for time to prepare a defense, since Mr. Ruddy has been advised of the charges against him for some time. His attorneys have been on record for some time. They have not requested any clarification up to this time. They have had more than ample time to prepare their defense. We have not changed the charges at all.

With respect to the fourth motion, Mr. Smith moves to dismiss because the Executive Director is not presenting these charges to this Trial Committee. I submit that the Executive Director certainly has got the authority to delegate his responsibilities. I think that if one were to look at the Constitution and By-Laws, Article 3, Section 3b, it would point out that the Executive Director does have such authority. It reads:

"The Executive Director shall be

responsible for and shall have all the authority necessary to carry on the daily administration of the Guild's business, which authority shall include but shall not be limited to the authority of employee discharge, the direction and control of personnel, and the supervision and correlation of the work committees and other intra-Guild activities."

Certainly a literal reading of that would apply that the Executive Director must do all of the administrative functions. That certainly cannot be accepted as a logical conclusion from reading that section. It must be inferred that he has the authority to delegate these duties in this authority that he has.

With respect to the fifth motion to dismiss, inasmuch as these proceedings are illegal under the National Labor Relations Act, I again point out, as I did in the David Victor case, that there has been no proof in this case that Mr. Ruddy is a supervisor within the meaning of the National Labor Relations Act. Even if that proof were forthcoming, there has been no proof that this Guild has violated Section 8(b)(1)(B) of the National Labor Relations Act by threatening to discipline or by disciplining Mr. Ruddy. Mr. Smith has read a portion of a mailing that went to all members of this Guild dated April 9, 1973 and which is in the record as Respondent's Exhibit No. 1. He read out of context.

Do you have a copy of that, so I may just read

another section out of context but in counterbalance. On the second page in the middle of the page, in the middle paragraph, it states:

> "These new and extreme pro-management decisions are being tested by many unions which traditionally have bargained and obtained benefits for persons who have some supervisory authority. Important test cases are on their way to the Supreme Court, including cases in the United States Supreme Court of Appeals, which covers California."

In the light of these facts, I have advised WGA, West to follow the same policy. In addition to the argument of industrial unions against this belated and unrealistic economic power loss to employers, I have pointed out that there is a reasonable chance that even the Board will not extend its new doctrine to hyphenate members of the Guild for several reasons. Those reasons will be presented to the National Labor Relations Board. It is not clear that the law has laid down any other cases by the National Labor Relations Board -- and not by the Courts, by the way -- which will be applied to the special circumstances in this industry relating to hyphenate members of this Guild. That question has yet to be decided. It is now in its first stage of hearings in the National Labor Relations Board.

With respect to Motion No. 6 which Mr. Smith offers as the alternative to Motion No. 5, he moves for

at least a continuance of these hearings, or this hearing, until a final decision of the National Labor Relations Board. Again, as I pointed in the David Victor case, we have no idea when there will be a final decision in the National Labor Relations Board. But even if there is a decision in the National Labor Relations Board within the next year, that may not be a final deciding factor in this case. This case may then go on to the United States Circuit Court of Appeals in the Ninth District, which might take again several years. It may then go up to the United States Supreme Court, which again will take several years.

It would not be practical for this Trial Committee to postpone these hearings until after a final determination on the law in these cases. We must assume that the law exists today as it existed through all of the years of the National Labor Relations Board history, prior to the decision in the recent last two years relating to other industries, and by those rulings the National Labor Relations Board has not ruled that this Guild is in violation of the National Labor Relations Act by disciplining or threatening to discipline its hyphenate members.

In any event, by the time a decision is rendered even by the National Labor Relations Board, the recollection of witnesses and events certainly will have faded. I might add also, it would seem from Mr. Smith's arguments that the simple filing of a complaint by the National Labor Relations Board is somehow a decision of that Board. It is

not. It is a decision to have a hearing to hear the facts on both sides, including the facts that the Guild will present the decision has not been delayed.

With respect to the seventh motion that this case should be dismissed because Mr. Ruddy is a feature film producer and not a writer, again I point out Mr. Ruddy is a member of this Guild. We will show that. He has paid his dues in spite of the fact that he may not have written or not have any writing credits. He has joined this Guild because he had writing credits, because he did some work in writing. He has gained all of the benefits of Guild memebership, and only now has he decided that he can disregard the Guild's request for him to comply with its rules in time of strike.

With respect to the eighth motion that this is an elite panel and that therefore this panel should dismiss the case or at least it should be heard before another panel. I cannot conceive that Mr. Ruddy is in any way being denied due process of law by having this panel hear his case, simply because this panel may be familiar with Guild history and the practices in this industry. If anything, I think that by that reasoning he should have even a fairer hearing by people who would not be less knowledgeable in Guild policies or aspects of membership and the practices of this industry.

With respect to Motion No. 9, that no hearing should be held during the strike that is currently in progress, Mr. Smith said the Guild cannot afford to have

any members found innocent because it would have an adverse effect on the strike.

As I pointed out in the David Victor trial, or as I did not point out but was pointed out by the Committee, that one of two decisions that have been decided or handed down by this Committee have resulted in a unanimous decision for a dismissal. It is clear from that this Committee has not taken into consideration the effects that its decision may have on this strike. As I urged in the David Victor case, I will again urge in this case that this Trial Committee not take into consideration the effects its decision may have on the present strike situation. To hold this hearing continued until after the strike is too indefinite a period of time. We do not know when the strike will end. We do not know what will actually constitute the end of this strike. We do not know if the Association itself will be in existence in several months. We do not know if we will reach agreement with some members of the Association. We do not know these things.

To hold it off for such an indefinite period of time, again we run the risks of the fade of recollection and the events.

With respect to the tenth motion that Mr. Christopher Knopf should not be part of this panel to me is without merit. The Producers Guild is not on trial here. This motion was raised for the first time at this hearing, and I point out that Exhibit No. 4 is a letter from me to David Miller dated April 27, 1973 in which I

provide the names of nine persons who were currently serving on the Trial Committee including -- I am sorry, it's eight names including the name of Christopher Knopf. That list of names was presented to Respondent's attorneys. I might mention that David Miller is also a part of the law firm of Loeb & Loeb, the same law firm of which Mr. Al Smith is a part of.

The list of names was presented at the request of Respondent's attorney. It was assumed at that time and was presented to them at that time, so that they would have an opportunity to raise any objection to any member serving on that panel. If such an objection had been made, every effort would have been made to see that other members would have served on the Trial Committee. No objection had been raised until this time.

MR. BLANKFORT: Mr. Mendonsa, before you leave your response to Motion 10, I think there was an inadvertent error in which you said it was raised in this case for the first time. It was raised for the first time in the David Victor case, the objection to --

MR. MENDONSA: The objection was raised for David Victor in the David Victor case for the first time. It was raised in this case for Mr. Albert Ruddy here for the first time today. The objection certainly could have been taken note of, but it would only have been as of yesterday for David Victor.

With respect to the eleventh and final motion to dismiss or to continue the hearing during the pendency

of the strike, Mr. Smith seemed to think there is a lack of due process for continuing these hearings while the strike is in progress. Again, we have no idea of when this strike will be over, if it ever will be. In any event, we do not know what the positions or what the tenor of the industry will be after the strike is over. The emotions may be even more piqued. We do not know that. We again risk the possibility that the recollection of the witnesses may fade. So I urge that each and every motion made by Mr. Smith on behalf of Mr. Ruddy be dismissed.

MR. SMITH: Mr. Chairman, I don't intend in view of the extended arguments on these motions yesterday to go through point by point every comment made by Mr. Mendonsa. I would respectfully request just a very brief statement in addressing myself to two or three of the points.

MR. KNOPF: I am going to take you at your word, Mr. Smith.

MR. SMITH: Okay, because a couple of these really require response.

At one point Mr. Mendonsa made the point that the Board has interpreted the Constitution by doing what it did and handling this proceeding the way it did. I think, sir, that it is this Committee's right and obligation and responsibility to interpret the Guild's Constitution. The Committee has the right to decide whether there was a compliance with Section 1 of Article 10, and, therefore, it is a bootstrap argument to say, "Well, it's got to be right under the Constitution, because that is the way we did

it." If that were true, gentlemen, obviously you would have no function at all, because everything the Guild does has got to be right because it was done that way, and I would suggest, gentlemen, that you have the right to construe Section 10 of the charges were not the documents that were served on Mr. Ruddy, and I do take issue with the concept that what the Board does has to be right, because it wouldn't do it if it were wrong.

On the motion which is a newly-made motion in connection with Mr. Ruddy about his status as a non-current member, Mr. Mendonsa concedes -- I think his phrase was, "It may be true that he has one credit in eight years." Well, of course, it is true, and that is what the record does show. He has one credit in eight years, and I think it is rather significant Mr. Mendonsa made no reference to the whole thrust of our motion, which was simply that as a non-current member Mr. Ruddy had no right to vote on the Strike Rules.

It is conceded he is a non-current member. The Guild's own records show that. The thrust of the due process argument, gentlemen, is that this Committee is attempting to impose discipline on a man under a rule that the man had no vote, no say, no right in the adoption thereof, and that is the thrust of our motion. It is a concept to which Mr. Mendonsa has never addressed himself. He has merely stated that any member of this Guild is subject to the rules of this Guild. Well, again I would submit, gentlemen, it is a bootstrap argument that doesn't go to

the due process concept of whether or not a member can be subjected to discipline under rules of which he had no voice in the adoption thereof. That is the due process thrust of this argument.

Just two other very brief points, gentlemen. I believe that the statement made by Mr. Mendonsa going to the motion where the Executive Director under the Constitution, as I submit, quite clearly requires that the Executive Director present the testimony to this Committee, Mr. Mendonsa in response to that reads the provision in the Constitution which sets forth the Executive Director's duties, and that happens to be set forth in Section 3(b) of Article 3, which is the article that sets forth the government and administration of the Guild. In the only sentence in the Guild's Constitution which sets forth the duties of the Executive Director, there is no reference to the fact that he can delegate any duty which the Constitution gives him. Now, gentlemen, I make this distinction because I think it is a very significant one. No one denies the fact that the Executive Director of this Guild is a very busy man and has many responsibilities. It is conceptually true, and it is factually true. We all know how busy Mr. Franklin is. No one can dispute that. Mr. Franklin has to delegate all day long. He has to delegate, but when a specific duty is imposed upon him by the Constitution, the highest document setting forth the rights and obligations of the Guild and its members, the document from which everything else in this organization flows, when that

document says, as specifically as it does, that the Executive Director shall present the testimony to the Trial Committee, I submit, gentlemen, that is a constitutional duty imposed on the Executive Director by your own Constitution.

I would equate it, gentlemen, with the President of the United States' obligation to sign or veto a bill that is sent to him by Congress. The Constitution says the President shall sign or veto and, if he doesn't sign or veto in 30 days, it becomes law. That, gentlemen, is a constitutional obligation. That doesn't mean that Franklin can't delegate duty, but I submit to you that he can't delegate a precise constitutional duty which the Constitution says he must fulfill.

It has nothing to do with his general right of delegation, and the clause which Mr. Mendonsa read which describes the duties of the Executive Director of Section 3(b), which says he shall be responsible for thus and so, it nowhere says or suggests that he has a right to delegate anything. Certainly I would submit that the Executive Director could delegate a constitutional duty that would have to be set forth in the Constitution, as we frequently find in constitutions and in by-laws where it would say the President or his delegate, the Executive Director, delegate a constitutional draftsman who knows how to add that clause, because it happens to be a very common phrase in by-laws and constitutions, but it doesn't say that it says the Executive Director shall do it.

I would submit, gentlemen, that there is no authority under this Constitution for this particular task to be delegable as a constitutional task.

Finally, the last point I wanted to make, gentlemen -- of course, I am incorporating by reference all the arguments that were made in the David Victor hearing -- the last point I specifically wanted to make here was Mr. Mendonsa's reference to the due process arguments, which I made, to wit, that this panel cannot possibly be impartial while the strike is in progress and while an acquittal or finding of innocence of any hyphenate would have an adverse impact on the strike itself. Mr. Mendonsa made the point that there have been two previous decisions, and one out of two was a unanimous decision for a dismissal. Well, this simply addressed itself to an unknown statement of fact. I don't know, and Mr. Ruddy through me, his counsel, doesn't know what this particular acquittal involved. I don't know whether it involved a producer hyphenate. I don't know whether it involved the whole hyphenate question. I am not saying it did, or I am not saying it didn't, because Mr. Mendonsa hasn't advised us of the particular conviction or acquittal here, but let us assume for argument's sake, gentlemen, that the person acquitted -- and I don't know who it was -- was a writer who is not a hyphenate and was charged with, say, refusing to show up for picket duty. Let us assume that was the acquittal, that a non-hyphenate writer declined a picket assignment, and he was acquitted. Gentlemen, if this is

true, these hearings, the Ruddy hearing, the Victor hearing, and the subsequent hearings are hearings involving hyphenates, producer hyphenates, and they address themselves to the whole issue, which there has been such an emotionally overwrought and tense issue, and all these strike negotiations -- this strike, the strike back in 1970, the strike back in 1968 -- namely, whether producer hyphenates are authorized to ignore Guild picket lines. That goes to show you that if an acquittal follows, it would have an adverse impact on the strike.

MR. KNOPF: Mr. Smith, please. I think you are repeating yourself constantly now, and you have been on about almost an hour and a half with these motions. You said you would be brief.

MR. SMITH: I thought I was brief, Mr. Knopf.

MR. LAVERY: Mr. Chairman, I have to leave momentarily, but I will return, or I will owe Beverly Hills some money.

MR. SMITH: I have concluded the points which I wish to make.

MR. BLANKFORT: I wish you would help me, Mr. Smith. By the tone of your voice and by the feeling that emanates from you, I feel rising emotion about a certain point that you have just now made which has to do with your asking us to attach great importance to the fact that the Constitution speaks specifically about the Executive Director here. But previously you were very passionate about that, I thought. Previously, however, you reminded us that we had the right to examine and explore and interpret our Constitution.

So I am really confused. Could we not then make inferences about the Constitution, about the Executive Director delegating its authority, as well as other issues that you have reminded us we had the authority to handle?

MR. SMITH: You certainly have the prerogative to interpret the Constitution. That is my whole position, and I am saying that your interpretation of it, that you can interpret, I would submit to you, sir, you can interpret that a precise duty stated to be the obligation of a certain person is a delegable duty.

MR. KNOPF: Mr. Smith --

MR. SMITH: I am not suggesting there is any conflict between those two.

MR. KNOPF: I don't argue the point either, except in explaining it you used as a parallel the Executive Director with the President of the United States. The President of the United States is an elective officer. The Executive Director is not. He has an appointive office. Within his jurisdiction are others who represent that office, and I think we generally accept the fact that Mr. Mendonsa, Mr. Griffiths, and others here do represent the Executive Director. They are not elected officials. They are not the President in this Guild.

I am going to call a recess for us to consider these motions. We will make it as brief as we can.

(A brief recess was held.)

MR. KNOPF: Back in session. The motions to dismiss are denied. I will ask that Mr. Mendonsa continue with the

presentation of the case for the Writers Guild.

MR. MENDONSA: I will at this time offer the credit records for Mr. Al Ruddy. May we stipulate to the authenticity of the Guild's records, that these are records kept in the normal course of business?

MR. SMITH: So stipulated.

MR. MENDONSA: I will offer these then into evidence. You have the original. I will provide you the original for a copy. This will be Guild's Exhibit 1.

MR. SMITH: No. 5, I believe. Weren't the first --

MR. MENDONSA: Well, we made those Trial Committee things.

MR. SMITH: All right.

MR. POE: Is this Exhibit 5?

MR. MENDONSA: No. This will be Guild's 1. We have Trial Exhibit 1 through 4, Respondent's 1, and Guild's 1.

MR. KNOPF: Did we receive a copy of the Respondent's Exhibit 1 or not?

MR. SMITH: I handed it to the reporter, Mr. Chairman. I handed one copy to the reporter, yes.

MR. KNOPF: I recall. Thank you.

MR. MENDONSA: We will also offer into evidence --

MR. SMITH: Excuse me, Mr. Mendonsa. I will just inquire whether Guild's Exhibit 1, which is a one-page document, contains all of the credit records for Mr. Ruddy with the Writers Guild.

MR. MENDONSA: Yes. I will offer at this time as Guild's Exhibit 2 Mr. Ruddy's work record and dues record

with the Guild since his acceptance into membership. Again, may we stipulate to the authenticity of the Guild's records and the fact that they are records kept in the normal course of business?

MR. SMITH: So stipulated.

MR. MENDONSA: Which I will offer into evidence. May we have a ruling that Guild's 1 and 2 are accepted?

MR. KNOPF: 1 is accepted, and 2 is accepted.

MR. MENDONSA: And the only other thing that I would offer is the representation that all members of the Writers Guild were sent the rules for the conduct of members during a strike, which is dated February 20th of 1973, and all members of the Guild were sent the strike orders that were sent out by the Guild during this strike, including strike orders dated March 5, 1973, March 15, 1973, March 19, 1973, March 27, 1973, April 11, 1973, and that is all.

MR. KNOPF: May I ask a question?

MR. MENDONSA: Yes.

MR. KNOPF: I notice in the upper right-hand corner of page 1 and 2 it says "Suspended, 8-31-6." What would that be?

MR. MENDONSA: You are referring to Guild's Exhibit No. 2?

MR. KNOPF: Yes, I am.

MR. MENDONSA: That would refer to the fact that he was an associate member on 4-63. He was suspended on 8-31 of 1966. He was reinstated again in September of 1967,

and he became current in March of 1970. He was then made a Guild member, or what would now be under the new Constitution the equivalent of non-current member in July of 1972.

MR. KNOPF: Why was he suspended?

MR. MENDONSA: Why he was suspended I don't know. Quite frankly, I don't know that it is relevant to these proceedings. I don't know. It may have been for lack of payment of dues. I'm not sure. That might be reflected by looking at 8-31-66. In 1966, if you will look on the fourth page of Guild's Exhibit No. 2, you will note under the year 1966 he apparently went through one quarter of 1964 without having paid dues. I suspect that that is why he was suspended.

MR. POE: Why didn't he get royalties on HOGAN'S HEROES?

MR. SMITH: Apparently that is reflected by Guild Exhibit 1, which shows that he collaborated in the story of the pilot, and I guess because he collaborated on the pilot on it, he got royalties from every subsequent -- which is, as you know, the custom.

MR. POE: Thank you.

MR. BLANKFORT: John, I am making the assumption that he is under our Pension Plan. Am I correct, or do you have to have special information?

MR. MENDONSA: Well, whether or not he is would depend upon his eligibility. He certainly has the right to participate like any other member in the Pension Plan, but the question is whether or not he has the sufficient elements

of eligibility under the Pension Plan itself to actively participate in it at this time. That information I do not know.

MR. BLANKFORT: Another question in relation to a non-current member. It is pointed out by Mr. Smith that he didn't have the right according to our Constitution to vote on the Strike Rules. I wonder whether you could enlighten us as to whether -- does the non-current member have the right to vote on the strike if it affects his employment?

MR. MENDONSA: Yes. Under the current Constitution. I will point out the section to you. It would be Article 4, Section 7, Subsection D on page 9 and page 10. It provides that the non-current members have the following rights:

> "Non-current members -- members of the Guild who have once attained current membership and subsequently become non-current members shall have the right to serve on all committees, to attend meetings, receive Guild communications, vote on Guild awards. A non-current member will also have the right to vote on restraining orders, but only when the member has a legal commitment to render writing services or to sell or license literary material to a company which is a signatory to a collective bargaining agreement with the Guild and only if such commitment would

be directly affected as a result of the issuance of a restraining order."

MR. BLANKFORT: Would Mr. Ruddy be held under that? Under the circumstances, could he have voted on our restraining order?

MR. MENDONSA: That would have depended upon whether or not he fell in this category of a person who would have a legal commitment to do writing or sell material. He had a right if he fell under that category certainly to vote on the restraining order.

MR. SMITH: Well, I think, gentlemen, that it is patently clear on the reading of this section that the member has to have a legal commitment to render writing services in order to be able to be in a position to vote on the strike order, and I will certainly represent to the Board that Mr. Ruddy is not a writer at this time and has no such legal commitment. We are going to introduce evidence to that effect. I don't think there is any serious question by Mr. Mendonsa. He certainly didn't raise it in response that Mr. Ruddy had a right to vote on the strike order. I believe that there is no question that he didn't have such a right.

MR. MENDONSA: Well, I don't know if there is no question. I do not agree with the fact that there is no question.

MR. POE: Mr. Smith, why isn't Mr. Ruddy here today?

MR. SMITH: Mr. Ruddy isn't here, Mr. Poe, and no writer hyphenate represented by our office will be present at

any hearing, because our office has advised the writer hyphenate in each case that these proceedings are illegal, and there is no legal right for the Writers Guild to proceed with these hearings for many of the same reasons which I have argued to this Committee, and, therefore, it is on the advice of counsel that Mr. Ruddy is not present, and no writer hyphenate we represent will be present, but because we have advised each such writer hyphenate that these are illegal proceedings and there is no jurisdiction on the part of the Writers Guild, so he is acting on the advice of counsel.

MR. KNOPF: Mr. Smith, why have you chosen to appear then?

MR. SMITH: Because according to the notice that was sent to Mr. Ruddy, Mr. Ruddy has the right to be represented by counsel, and it is traditional in these proceedings, Mr. Knopf, that counsel can argue and appear in this jurisdiction. You can have your counsel assert for the Court or your tribunal or panel that this panel has no jurisdiction.

MR. KNOPF: But you are defending the case.

MR. POE: You represent Mr. Ruddy?

MR. SMITH: Yes.

MR. POE: So that we can ask you questions?

MR. SMITH: That's right, and Mr. Ruddy is here through counsel.

MR. POE: Then, I have a question. Apparently Mr. Ruddy has been paying dues to the Guild. In the period

since his last credit -- that is up to and including, as far as I know -- when did he last pay dues?

MR. MENDONSA: Well, his last payment of dues was in the first quarter of 1973. The record will show that he has actually paid dues, I believe, for every quarter. He has missed quarters here and there, which he apparently has made up, but as far as I can see, he has paid dues continuously since 1967, since the second quarter of 1967.

MR. POE: If you were Mr. Ruddy, I would ask you, but, Mr. Smith, doesn't this demonstrate that Mr. Ruddy considers himself a writer?

MR. SMITH: Mr. Ruddy is on the record a non-current member of the Writers Guild. I think that the best I can say is that Mr. Ruddy is just that. He is a non-current member of the Writers Guild. We see from the exhibits, the writing credits, that he has had three writing credits in his entire career, a career which we know at least spans over a decade or more, and his position, I think, is simply there as a matter of record. He is a non-current member of the Guild.

MR. POE: I am not arguing, but I am curious if he considers himself a writer or not. He continues to pay dues. Does that mean he anticipates writing in the future?

MR. SMITH: Well, Mr. Poe, I would say that what might be the subjective intention of anyone isn't as significant as what the objective fact is, and I think we will demonstrate to the Committee that as an objective fact Mr. Ruddy does not write and is not involved in rendering

writing services, and in doing writing work, he is a producer of theatrical feature films, sir.

MR. POE: Then, why does he bother to pay dues?

MR. SMITH: I can't answer that for Mr. Ruddy. Mr. Blankfort asked a question which addressed itself to the Writers Guild Pension Plan. It is my recollection of the Plan -- I have not reviewed it for the purposes of this hearing -- but it is my rather clear recollection that you must maintain a certain number of writing credits -- not only must you maintain them, but there is a number of continuous years within which you have to maintain them or so many years you have to have some greater number in order to be eligible for the Plan -- and I think on the basis of my recollection of these scanty three credits within twelve years, that Mr. Ruddy would not have eligibility for any benefits under the Plan.

MR. KNOPF: That is not quite correct.

MR. SMITH: I could be wrong, but I know there is a credit requirement to the eligibility under the Plan.

MR. MENDONSA: That is not right. I think it is timely employment as a writer.

MR. KNOPF: Let me ask you a few questions. We have asked this terribly important question of whether Mr. Ruddy considers himself a writer or not. He was suspended in 1966, and Mr. Mendonsa pointed out for non-payment of dues. He apparently chose to take himself off suspension. The only way you can do that is by paying your dues. Would you have any idea in that you say you represent Mr. Ruddy

why he chose to do that?

MR. SMITH: Well, Mr. Knopf, in response to your question, of course I can't speculate as to what might have been in Mr. Ruddy's mind. I can only do what the Committee can do, and that is to look at the exhibits and draw inferences. I do note that it was in 1965 that he participated in the pilot for HOGAN'S HEROES and probably it is because -- I would assume that it is a reasonable inference on the part of the Committee that because he participated in the creation of the story for this pilot which would have generated residuals, that he chose to resume his payment of dues to the Writers Guild, but again I am speculating.

MR. KNOPF: Do you have any knowledge --

MR. MENDONSA: Payment of dues or residuals would not be continued upon his membership in the Guild.

MR. SMITH: I think, gentlemen, that we are really speculating as to what is in Mr. Ruddy's mind. I cannot get into his mind.

MR. KNOPF: I think you told us that you would speak to Mr. Ruddy.

MR. SMITH: With respect to such matters with respect to Mr. Ruddy.

MR. KNOPF: But perhaps there are things which are important for us to get into his mind to answer.

MR. SMITH: I still can't speculate, Mr. Knopf.

MR. MONASTER: May I ask a question? The members of the Guild who have been charged in connection with these proceedings have been advised by you not to appear because

it was illegally constituted, so we have made direct questions to you, because we could not direct them to people who are not here. Could I ask you whether Mr. Ruddy went through a picket line?

MR. SMITH: Look, obviously I am not in a position to answer factual questions based upon the direct personal knowledge of Mr. Ruddy. I can interpret documents as well as the Committee can, but I am certainly not going to attempt to answer factual questions any more than anyone else can. By the way, just to correct your last statement, Mr. Monaster, I am not attempting to act as if I were Mr. Ruddy and give testimonial evidence on questions of fact. I am representing him for the purpose of making legal contentions and asserting and presenting to the Committee testimonial evidence of witnesses and so forth, but I cannot testify to facts, sir.

MR. MONASTER: No, of course not, but when we introduced a witness who testifies, as he did in the case of Mr. Ross, that on two occasions he saw him either coming out or going in, you were able to question Mr. Ross as to whether there was ever a time when there were no pickets at Paramount, whether there was ever a time in which he didn't relieve anyone, but we have no opportunity to ask Mr. Ruddy, so that Mr. Ross' testimony is in doubt because of the questions you asked, and the absence of Mr. Ruddy means that we have no information on that either.

MR. SMITH: Mr. Monaster, I would simply submit to you that Mr. Ruddy has no obligation to appear in person, and

Mr. Ruddy has elected to appear by counsel, and the actual absence is something which the Committee has to take into consideration, but obviously in no case can counsel give factual testimony. Testimony which is competent to be regarded by the Committee can only be given by a witness who participated in the events involved.

MR. MENDONSA: Well, I think the Committee can consider the absence of Mr. Ruddy as a Respondent in this case, and the fact that Mr. Smith says that he advised Mr. Ruddy and all hyphenates not to appear in these matters because they are illegal, sort of begs the question. These proceedings have not been determined illegally either by this Committee, by the National Labor Relations Board, by the State or Federal Courts. The simple fact that Mr. Ruddy is not here today means he will never be here, even if later on these proceedings be decided to be legal, so this Committee is being denied the right to examine the Respondent in this case, and I think that it can take into consideration the fact that if he is not here to answer this Committee's questions --

MR. SMITH: Well, I think the Committee should also take into consideration in evaluating Mr. Ruddy's absence, for whatever it is worth, the fact that Mr. Ruddy was advised by counsel that the proceedings are illegal and was advised by counsel that he should not appear for those reasons, for whatever that is worth, I think the Committee can take that into account.

MR. KNOPF: Mr. Smith, the Committee accepts these

proceedings as being completely legal. I would ask just one question. Would you feel it improper to call Mr. Ruddy and get an answer to one question for me, and that is why he chose to take himself off suspension in 1967?

MR. SMITH: Let me say this, Mr. Knopf, and again most respectfully to this Committee that I would advise and recommend to Mr. Ruddy that he not appear, and I would recommend that because I would advise him that in my opinion the proceedings are illegal.

MR. KNOPF: Then what you are recommending is that we draw our own conclusions from the evidence as presented before us?

MR. SMITH: I think that as a matter of law the Committee has to evaluate all the evidence, both the Guild evidence and the evidence which I submit, sir.

MR. MENDONSA: But the fact that Mr. Ruddy is not present because the Committee is in fact illegally constituted again begs the question. That will not less be affected by a later determination that this Committee is illegally constituted or the proceedings are illegal. He will still be just as innocent if they are later determined illegal, even if this Committee were to find him guilty because he sat here and testified.

MR. KNOPF: I am going to ask that we move on, Mr. Mendonsa. Anything further?

MR. MENDONSA: No. I have presented my case. We will rest.

MR. SMITH: Before proceeding, I would simply like to

state for the motion, Mr. Knopf and Members of the Committee, that the Respondent Ruddy moves to dismiss the proceeding on the case presented by the Writers Guild on the basis of the showing made by the Guild itself, the writer's credit record offered in evidence by the Guild itself showing that Mr. Ruddy has had only three writing credits in the past ten years, the record showing that Mr. Ruddy is a non-current member of the Guild. The evidence of Mr. Ross to the effect that Mr. Ruddy is a theatrical feature film producer, and that on its face, I believe the Guild's case demonstrates that there is no jurisdiction over Mr. Ruddy, who was functioning as a producer, not as a writer. For that reason I move to dismiss.

MR. MENDONSA: May I respond?

MR. KNOPF: Please.

MR. MENDONSA: The fact that Mr. Ruddy does not have writing credits does not make him any less than a writer. People, I suspect, could go through their whole lives writing without obtaining a writing credit. The fact of the matter is, however --

MR. KNOPF: Let the record show that Mr. Blankfort has left at this point.

MR. MENDONSA: Well, let us pause at this point, please.

(A discussion was held off the record.)

MR. KNOPF: We will return.

MR. MENDONSA: Before we went off the record, I was responding to the motion to dismiss, simply saying that the writing credits do not make one any less a member, or lack

of writing credits does not make one any less a writer or a member of this Guild. Mr. Smith states that the record shows that Mr. Ruddy is a non-current member and is a producer of theatrical feature films. I submit to you that what Mr. Ruddy has been charged with is a crossing of a picket line established by the Guild at any entrance to the premises of a struck producer. And this rule applies to all members as stated in Strike Rule No. 12. The fact of the matter is, we have shown that he is a member of this Guild. Although he is a non-current member, that is simply a status of Guild membership. He is nonetheless a member of this Guild. He has elected of his own choice to remain a member of this Guild.

He has thereby reaped all the benefits of membership of this Guild, including those set forth in the Constitution and By-Laws. The simple fact is he is a member who has crossed a picket line, as has been established in the evidence. He has thereby violated the Guild's Strike Rules and is simply guilty. The Guild has proven its case.

MR. SMITH: The simple fact, Mr. Chairman and Members of the Committee, that the Guild's evidence shows, taken on its face, that the Respondent crossed the picket line to perform producing services, and that this Committee is attempting to discipline the Respondent for producing services for crossing a picket line to perform producing services --

MR. KNOPF: This Committee is attempting to do nothing

except hear a case, and may I ask that you present yours.

MR. SMITH: I assume the motion is denied for the record?

MR. KNOPF: Yes.

MR. SMITH: Respondents would call Mr. Richard Moyer, please.

RICHARD MOYER,

called as a witness by and on behalf of Respondent, was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

Q Would you state your name for the record, sir.

A Richard Moyer.

MR. MENDONSA: M-o-y-e-r?

THE WITNESS: That's right.

Q BY MR. SMITH: With whom are you employed, Mr. Moyer?

A Paramount Pictures Features.

Q For how long have you been employed, sir?

A A year and nine months.

Q What is your present position with Paramount, sir?

A The title I have is Director of Creative Affairs.

Q Director of Creative Affairs?

A Yes.

Q. How long have you held that position, sir?

A. The same length of time, a year and nine months.

MR. BLANKFORT: Could you talk a little louder, please?

Q. BY MR. SMITH: You have been Director of Creative Affairs since joining Paramount, sir?

A. That's correct.

Q. Now, who is Peter Bart, sir, to your knowledge?

A. Peter Bart's title is Vice-President of Production for Paramount Features, and he is my immediate superior.

Q. What are Mr. Bart's functions, to your knowledge, sir?

A. The functions deal in all the creative affairs aspects of making features. Primarily he is -- he deals with presenting projects to the President of Paramount.

Q. Now, what is the relationship, if any, between your functions with Paramount and Mr. Peter Bart's functions with Paramount? What is your relationship with him?

A. Well, I work very closely with him, primarily in literary affairs. We make decisions and evaluate scripts that come in. We try to attract certain projects that we would like to make. We hire the writers for things that Paramount develops, producers, writers, directors, actors. Most of the creative aspects of motion picture making come under his and my jurisdiction.

Q. Is he your immediate superior, sir?

A. Yes.

Q. And are you his immediate subordinate?

A. Yes, I would say so.

Q. Now, Mr. Moyer, in your official capacity with Paramount, do you know Mr. Albert Ruddy?

A. Yes, I do.

Q. What is the basis of your acquaintance with Mr. Ruddy?

A. Like Mr. Ross, I think I first met Al Ruddy at the time he was making THE WILD SEED at Universal, and I was just a passing acquaintance, but when I joined Paramount, THE GODFATHER was in post-production, and that is where I first met or had a business dealing with Al Ruddy.

Q. Now, do you have current business dealings with Mr. Ruddy? When I say "current", I mean on a generally current day-to-day basis.

A. Paramount has two projects with Al Ruddy. Do you want me to detail what they are?

Q. Please.

A. We have a development deal with Al Ruddy as producer on a book, and that project is currently in the limbo state, because we cannot hire a writer to do the screenplay on it because of the strike.

MR. KNOPF: What is the name of it?

THE WITNESS: It is called NUMBER ONE WITH A BULLET. And the other project we have with Ruddy is called THE LONGEST YARD, and it is a finished screenplay that Al Ruddy is attempting to package for us. He is the producer on that film also.

Q. BY MR. SMITH: Now, in connection with these

projects, Mr. Moyer, are you working with Mr. Ruddy on more or less of a current daily basis?

A. Yes.

Q. And do you come in contact with the functions and operations and activities of Mr. Ruddy on that basis, sir?

A. That's correct.

Q. Now, to your knowledge, Mr. Moyer, what function does Mr. Ruddy perform at the Paramount Studios?

A. Well, he is the producer on each of those projects. As I say, one is not active at the moment because of the strike. The other is active, because it is a finished screenplay, and Ruddy is attempting to find a director at the moment for it.

Q. Now, Mr. Moyer, to your knowledge, in your official capacity with Paramount, as you have described, does Mr. Ruddy as producer perform the following functions?

Gentlemen, I am going through for the record a series of functions that are described in the National Labor Relations Act, Section 2, Subdivision 11 in defining the term "supervisor".

To your knowledge, Mr. Moyer --

MR. MENDONSA: Well, just for the record, I will object to it because it is hearsay, and Mr. Ruddy is not here for purposes of cross-examination, at least for purposes of establishing him as a supervisor, and this is a very esoteric field.

MR. SMITH: Mr. Chairman, I am merely asking Mr. Moyer whether or not he performed the services, whether or not he

can do these things.

MR. KNOPF: We would like to hear it.

Q. BY MR. SMITH: To your knowledge, Mr. Moyer, does Mr. Al Ruddy in the interests of Paramount have the authority to hire personnel?

A. Yes.

Q. Does he have the authority to transfer personnel from one assignment to another, as you understand the term "transfer"?

A. Yes.

Q. Does he have the authority to suspend personnel?

A. Yes.

Q. Does he have the authority to lay off personnel?

A. Yes.

Q. Does he have the authority to recall personnel?

A. Hire them, yes.

Q. Does he have the authority to promote personnel?

A. Yes.

Q. Does he have the authority to discharge personnel?

A. Yes.

Q. Does he have the authority to assign personnel?

A. Is that somewhat like transfer?

Q. Like transfer, as I would understand.

A. All right, I would say he does.

Q. Does he have the authority to reward or discipline personnel?

A. Yes.

Q. Now, Mr. Moyer, to your knowledge, does

Mr. Ruddy perform any writing services or do any writing work whatever in connection with his functions at Paramount?

A. No. He has never represented himself as a writer, to my knowledge, and I was surprised to learn today when I was asked to come down here that he was even a member of the Writers Guild. He was or has never presented himself as a writer on any of the projects as put forth to us.

Q. In all of your dealings with Mr. Ruddy in your official capacity at Paramount, Mr. Moyer, did you know or was it ever communicated to you that Mr. Ruddy attempted to do or perform any writing functions whatsoever?

A. No.

Q. When did you first discover that Mr. Ruddy was at any time a writer?

A. Well, as I say, today I found out that he was a member of the Writers Guild, and when the HOGAN'S HEROES thing was brought up, I knew that he had something to do with that. I didn't realize though that he had been a writer on the pilot of it.

MR. SMITH: That is all I have, Mr. Chairman.

MR. MENDONSA: I have a few things.

EXAMINATION

BY MR. MENDONSA:

Q. Mr. Moyer, did you have anything to do with the hiring of Mr. Ruddy?

A. I had something to do with the evaluation of the properties that he presented to us. The deal was not

made by me.

Q. What kind of property did he present to you?

A. It was a novel, a novel in progress. The other, THE LONGEST YARD, was a screenplay.

Q. And did you know by whom the screenplay was written?

A. The screenplay was by Malcolm Braley, I believe.

MR. POE: How do you spell that?

THE WITNESS: B-r-a-l-e-y.

Q. BY MR. MENDONSA: Were there any other credits on the screenplay that was submitted to you?

A. I believe that the screenplay was based on a book by Malcolm Braley. And then the screenplay -- Ruddy hired another writer, Tracy Keenan Wynn, to rewrite an existing screenplay.

Q. And was that employment after he was hired by Paramount?

A. Yes.

Q. And when was he hired by Paramount?

A. Last summer sometime, I believe.

MR. POE: I am confused. Wynn was hired last summer or Ruddy?

THE WITNESS: Wynn.

Q. BY MR. MENDONSA: When was Ruddy hired?

A. Well, approximately the same time, and the second deal with Ruddy was in November.

Q. November of 1972?

A. That's right.

Q. Now, you say you didn't actually hire him yourself. Who did hire him?

A. Frank Yablans, the President of Paramount.

Q. Have you ever seen his personal contract?

A. No, I haven't.

Q. Then you wouldn't know whether or not he has a constructive arrangement with Paramount?

A. I know that he doesn't.

Q. He does not?

A. He does not.

Q. So, to your knowledge, he could be writing for somebody else, or you do not know what he is writing?

A. No. I just know about the deals he has at Paramount.

Q. Has Tracy Keenan Wynn worked on the rewrite since the 6th of March?

A. No.

Q. Now, you state that Mr. Ruddy has the authority in the interests of the company to hir personnel. How is it that you know that?

A. Well, he just hired the lead actor for the picture.

Q. And was he the only one that had any say with respect to hiring of that person?

A. Well, there was a mutual agreement between Paramount Pictures and Al Ruddy on who should be the lead.

Q. There were other people that had a say in it, whether or not he was hired?

A. Mutual agreement, yes.

Q. And Mr. Ruddy could not hire anyone just on his own accord then?

A. He can. I don't know what his total agreement is, as his contract reads. Certainly he has the right to hire personnel on a picture.

Q. How is it that you know?

A. I think that the lead actor and the director are in most cases like that as a joint decision between the studio and the producer.

Q. What I am asking you is how is it that you know that he has an absolute right to hire any personnel on his own without going through anyone else?

A. Peter Bart has told me that. I asked him before I came down here anticipating this question. Yes, he does.

Q. So you do not have it as something of your own knowledge? It is something that you asked of Peter Bart?

A. Right.

Q. Can he take somebody off one project and put them on another project?

A. That presupposes that he has other prcjects to take them from.

Q. Well, on any project that Paramount has, does he have a right to transfer one person from that project to another project?

A. I assume that he does.

Q. But is it an assumption? It is not from your own personal knowledge? You don't know for sure?

A. I think that it is a question that is not very defined.

Q. He also has the authority to suspend personnel.

Do you know of any situation in which Mr. Ruddy has suspended anyone?

A. Not directly, but I am sure that on THE GODFATHER, there were some people suspended.

Q. Yes, but did you know if Mr. Ruddy actually himself suspended them, of your own personal knowledge?

A. No, I can't say for sure. I don't know of any specific cases.

Q. As far as laying anybody off, do you know if he has ever laid anybody off specifically, he himself?

A. Not specifically.

Q. Do you know if he has ever called anyone from layoff?

A. No.

Q. Now, you said that he has the authority to promote people. Do you know if he has ever promoted anyone?

A. I can't give any specific example of that.

Q. Do you know of any authority that was specifically given to Mr. Ruddy to promote anyone?

A. Would you repeat that?

Q. Well, let me rephrase it.

How was it you said that you testified that he had the authority to promote personnel? How was it that you know he has that authority?

A. Well, he is a producer. He has the right to hire

who he wants, and I guess he also has the right to fire them, except if their contracts --

Q. I am not talking about hiring or firing. I am talking about promoting.

Did he give him a raise?

A. I'm sure if there is a grip working on a film that he is producing, he could promote them to his personal assistant.

Q. And without talking to anyone?

A. Without talking to anybody on the executive level at Paramount Pictures.

Q. He could authorize this man to earn more money without having to go through anyone, through the personnel department, or anyone else at Paramount, right?

A. Right. I am just assuming this.

Q. Okay, it is an assumption on your part.

It is not something that you know from your own personal knowledge?

A. That's right.

Q. Now, does he have the authority to assign anybody to a particular work?

A. The answer to that is the same way as the transfer question.

Q. Again, it is an assumption on your part?

A. Yes.

Q. Has he ever reported anyone for their outstanding work or anything like that?

A. I think he has given out some presents, yes.

Q. Presents? Are these something that he has done with Paramount money?

A. I doubt it.

Q. It would be something on his own then, right?

A. Right.

Q. Do you know if he has disciplined anyone, any personnel at all at Paramount?

A. No.

Q. Now, does Mr. Bart have anyone else besides you below him on his staff?

A. We have two people also on the staff at Paramount, and we have a New York office, which he is also in charge of.

Q. Do those other people on the staff have a function similar to yours?

A. Somewhat.

Q. Do any of these people work with Mr. Ruddy?

A. They would have some contact with him.

MR. MENDONSA: I have no further questions.

MR. SMITH: There are a couple of very brief questions, Mr. Chairman.

EXAMINATION

BY MR. SMITH:

Q. Mr. Moyer, when you referred to these different functions that Mr. Ruddy performs, you were basing your information, were you not, sir, upon your general knowledge of the functions of a producer in the industry?

A. That is true. That's right.

Q. And you know the position that Mr. Ruddy holds on the Paramount lot, do you not, sir?

A. Yes.

Q. You know of your own direct personal knowledge, do you not, sir?

A. That is true.

Q Now, on the basis of the position that he holds, you have no personal doubt on the basis of your general knowledge of the industry what prerogatives a person having that position has; isn't that right, sir?

A. That's correct.

Q. And wasn't it based upon that knowledge in the industry, based upon your position at Paramount, that you assumed that he had these various rights to which you testified?

A. That's right.

MR. MENDONSA: Well, just for the record, I will object to it, because I don't know that he has been established as an expert witness to testify on the practices of the industry or what is established in the industry as practices for producers.

MR. SMITH: Well, I think that the Committee can draw its own conclusions from the position which is held by Mr. Moyer on the Paramount lot, from his employment in his present position. That is all I have, gentlemen.

MR. KNOPF: Any questions from the Committee?

MR. POE: Yes, I have a question.

EXAMINATION

BY MR. POE:

Q. Tracy Keenan Wynn, I gather, is off the picture until the strike is over?

A. Yes.

Q. So there is no writer on the picture till the strike is over?

A. That's correct. In fact, we are satisfied with the script. I don't think there is going to be any more work done on it.

Q. No revisions or cuts?

A. That depends -- well, there is no director assigned to it. Perhaps he would like Tracy to come back and do some rewriting in the normal course of events. As it is now, we have a script that we are satisfied with.

Q. Then why does Mr. Ruddy have to go into the studio?

A. I do believe Mr. Ruddy has an office at that lot.

Q. I have an office at Fox.

A. I assume that since he was seen there around the early part of April, that he perhaps had GODFATHER business there.

MR. BLANKFORT: I have a question, perhaps of Mr. Smith. Mr. Moyer hadn't seen the contract between Mr. Ruddy and Paramount, had he?

MR. SMITH: Or --

MR. BLANKFORT: Or could you answer my question perhaps? Are there any provisions for his services as a writer?

MR. SMITH: I have not seen the contract between Ruddy

and Paramount. I simply am making no statement with respect to the contents of the contract between Mr. Ruddy and Paramount, because I haven't seen the contract, nor have the contents of the contract been called to my attention in any way, shape, or form, so I am saying that we will make no representation to the Committee one way or the other.

MR. BLANKFORT: But you know that in many hyphenate contracts, there is a broad description of the services that may be asked, like producing, directing, writing, and so on?

MR. SMITH: Well, I don't think, Mr. Blankfort, that we can speculate as to the contents of a document which no one has seen. Obviously we have the testimony here that Mr. Ruddy is performing producing functions, and we have the record of his dearth of writing credits. I don't believe there is any testimony on which the Committee could conclude that he does any writing services, sir.

MR. BLANKFORT: I wasn't pointing my question toward that. I just want to know whether the general -- just the way you point out to us that we know generally what a producer does, and that that is one of the points that we should consider, and I think appropriately. It occurred to me that we also know generally that in hyphenate contracts, where there has been any record of that person writing includes the possibility that he be called on to write. I am not saying that Mr. Ruddy is writing at all. That seems to me like what is generally practiced in the industry.

MR. SMITH: Well, I don't think that that is anything that I can speculate on. The contract shows that Mr. Ruddy is in the capacity of doing nothing at Paramount. There is nothing in this record, sir.

EXAMINATION

BY MR. POE:

Q. Mr. Moyer, did Mr. Ruddy ever discuss with you the problem of crossing the picket line?

A. No. In fact I have not seen Al Ruddy since the night of the Academy Awards.

Q. What was that date?

A. April 14th, 12th, something.

Q. Can you shed any light on why Mr. Ruddy continues to pay dues to the Guild?

A. Prestige, maybe.

MR. MENDONSA: I will ask that that be stricken.

MR. SMITH: It is strictly speculative. The witness is speculating as to what might be in Mr. Ruddy's mind.

MR. POE: Well, it is possible that Mr. Ruddy might have told him why.

MR. MENDONSA: Well, I think that his testimony, however, was the last time was on April 14th. His testimony was also that the first time he learned that he was a member of the Guild was today.

MR. POE: All right.

MR. KNOPF: I have a question too, Mr. Moyer.

EXAMINATION

BY MR. KNOPF:

Q. Mr. Moyer, the screenplay written by Tracy Wynn was THE LONGEST YARD?

A. That's correct.

Q. You say that it is in adequate shape. It needs no further work.

How do you know that?

MR. POE: No, no. Pending what a director may ask for.

MR. KNOPF: Right.

Q. But you are satisfied with it. That was your testimony?

A. Yes.

Q. How did you know that?

A. Well, discussions among ourselves.

Q. Ourselves being whom?

A. Peter Bart, myself, and Al Ruddy.

Q. When did those discussions take place?

A. In November.

Q. No discussions in the script since that time at all?

A. Discussions on progress in getting a star and director.

MR. KNOPF: Thank you very much.

EXAMINATION

BY MR. MENDONSA:

Q. Tracy Wynn was hired in November of 1972 to do a rewrite on the script?

A. No. It was when he turned it in.

Q. Oh, he turned it in in November of 1972?

A. Yes.

MR. SMITH: Is the witness excused?

MR. KNOPF: All right, Mr. Moyer. Thank you very much.

(The witness left the conference room.)

MR. SMITH: The Respondent rests, Mr. Chairman, and in the interests of brevity, because Mr. Susman has been waiting for a long time to come in for the next case, I would simply now at the completion of the entire case renew all the motions that were made at the outset with the same force and effect as they were set forth in full in the record at this point in support of the various positions, and in particular the juridical motion addressed to the non-writer status of Mr. Ruddy and the fact that he is a supervisor, as now fortified and strengthened and confirmed by the evidence in this record, so I would simply on the record renew all the motions to dismiss.

MR. KNOPF: I think we stand firmly in our resolve to deny those, the motions to dismiss. Is there any other comment about it here? If not, I would ask for closing arguments.

MR. MENDONSA: Well, also in the interests of brevity, I will simply say that the Guild has established that this

man, Albert Ruddy, is a member of this Guild, and that it has also been established that he did cross the line on March 14th and March 15th in violation of Strike Rule No. 12.

MR. SMITH: I will try to be equally brief. All the evidence in this record, I think, without contradiction shows that Mr. Ruddy did not perform writing services, has not performed writing services since 1971, at least that there is no evidence in the record to show that Mr. Ruddy performed other than producer services on the occasions of which it is alleged, on which it is alleged that he crossed the picket line. I would submit very respectfully that this Committee has no jurisdiction to discipline Mr. Ruddy for performing a non-writing service and for performing producing services. I would submit that the subject matter of Mr. Ruddy's activities on the occasions in question are addressed to an area on activities beyond the jurisdiction of this Guild, that an attempt by this Committee to discipline Mr. Ruddy for performing non-writing services for his employer, pursuant to his contractual relationship with Paramount, is in excess of the jurisdiction of this Guild, is an unlawful labor practice, and I would submit that there is no jurisdiction on the part of this Committee to discipline Mr. Ruddy, as is now confirmed by the record and by the testimony as to the nature of his services. We are dealing with a non-current member here, dealing with someone who had no opportunity to vote on the Strike Rules of which he is accused of violating, and I submit that there is simply no basis juridically or by way of due process for a

finding of discipline in this case.

MR. KNOPF: I will close the hearing with the following, which I will read.

"This matter will be taken under submission by the Trial Committee. After this Committee has deliberated, it will submit its written recommendation as to the guilt or innocence, along with its recommendation for disciplinary action, if any, to the Board of Directors who, under the Guild's Constitution and By-Laws, have the authority to either accept, reject, or modify this Committee's recommendation. In order for this Committee to recommend a finding of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the Respondent be acquitted of the charges."

If there be nothing further, this hearing is adjourned.

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I, PETER M. RUNKLE, Notary Public for the State of California, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth;

That the testimony of the witnesses and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true record of the testimony and all objections made at the time of the examination.

In witness whereof, I have subscribed my name and affixed my seal this 8th day of June, 1973.

Peter M. Runkle
Notary Public in and for the
State of California

OFFICIAL SEAL
PETER M. RUNKLE
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Apr. 26, 1977

ORIGINAL

INTRAUNION DISCIPLINARY HEARING

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.,

vs.

HERMAN S. SAUNDERS

Respondent.

No._____.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

May 22, 1973

Reported by:

Peter M. Runkle

COLEMAN, HAAS, MARTIN & SCHWAB
1830 WEST 8TH STREET • SUITE 201
LOS ANGELES, CALIFORNIA 90057
DU 1-3701

INTRAUNION DISCIPLINARY HEARING

In the Matter of)
)
WRITERS GUILD OF AMERICA, WEST,)
INC.,)
)
)
vs.)
)
HERMAN S. SAUNDERS)
)
Respondent.)
)

TRANSCRIPT OF PROCEEDINGS taken on behalf of Writers Guild at 8955 Beverly Boulevard, Los Angeles, California, commencing at 5:00 P.M., Tuesday, May 22, 1973, before Peter M. Runkle, Notary Public.

BEFORE:

CHRISTOPHER KNOPF, Arbitrator

JAMES POE

NATE MONASTER

MICHAEL BLANKFORT

EMMET LAVERY

APPEARANCES:

FOR WRITERS GUILD:

JOHN A MENDONSA, ESQ.
Resident Counsel, Writers Guild of America
8955 Beverly Boulevard
Los Angeles, California

FOR RESPONDENT:

LOEB & LOEB
BY: ALBERT F. SMITH
and SAUL N. RITTENBERG
1 Wilshire Building, 16th Floor
Los Angeles, California

and

ROSENFELD, MEYER & SUSMAN
BY: ALLEN E. SUSMAN
9601 Wilshire Boulevard
Beverly Hills, California

I N D E X

W I T N E S S E S:

	Page
S. S. SCHWEITZER	
Examination by Mr. Mendonsa	22
Examination by Mr. Smith	26
Examination by Mr. Susman	26
MARGARET ARMEN	
Examination by Mr. Mendonsa	28
Examination by Mr. Susman	31
JOHN A. MENDONSA	
Examination by Mr. Susman	51
ARNOLD SHANE	
Examination by Mr. Susman	54
Examination by Mr. Mendonsa	57

E X H I B I T S:

	In Evidence
GUILD'S EXHIBITS	
1	36
2	37
TRIAL COMMITTEE'S EXHIBITS	
1, 2, 3, 4	72A
RESPONDENT'S EXHIBIT	
1	72A

LOS ANGELES, CALIFORNIA, TUESDAY, MAY 22, 1973, 5:00 P.M.

--oOo--

MR. KNOPF: The hearing will come to order.

MR. SMITH: Excuse me, Mr. Chairman, before we go into the Saunders matter, can we put on the record in the matter of Albert Ruddy that counsel stipulated that the Constitution and By-Laws of the Writers Guild, as well as the Writers Guild Strike Rules and all strike orders shall be deemed received in evidence and shall be deemed part of the record of the Ruddy disciplinary proceedings.

MR. MENDONSA: So stipulated. As far as that goes, if you want to stipulate the same to this proceeding, I will do it.

MR. SMITH: Right.

MR. KNOPF: That is accepted.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc., versus Herman S. Saunders, S-a-u-n-d-e-r-s. This matter is being heard before a Trial Committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, and Christopher Knopf, Chairman.

Will the parties please state their appearances for the record. For the Guild.

MR. MENDONSA: Yes. John A. Mondonsa, a resident counsel appearing on behalf of the Executive Director of

the Writers Guild of America, West, Inc.

MR. KNOPF: For the respondent.

MR. SMITH: Yes. For the respondent the firm of Loeb & Loeb by Albert F. Smith and Saul N. Rittenberg; and the firm of Rosenfeld, Meyer & Susman by Allen E. Susman.

MR. KNOPF: Are there any other appearances to be made in this matter, Mr. Smith?

MR. SMITH: No other persons.

MR. KNOPF: No other appearances.

The introduction of Trial Committee exhibits.

MR. SMITH: Mr. Chairman, before the introduction of exhibits on behalf of the Respondent Herman Saunders, I would like to present to the Committee a series of motions, and because of the similarity between the motions to be asserted in this proceeding and motions which were asserted and argued from the proceedings involving Respondent David Victor and Albert S. Ruddy, I would respectfully incorporate by reference to the transcript of this proceeding the arguments that were made in support of those motions, so that I could present the motions in abbreviated form to the Committee.

Would that be acceptable to the Committee, sir?

MR. KNOPF: Delightful.

MR. LAVERY: Delightful.

MR. MENDONSA: There will be no objection to that motion, if the arguments in opposition to the motions are also incorporated.

MR. SMITH: So stipulated.

Therefore, incorporating by reference the arguments in support of the respective motions appearing in the transcripts of the Victor proceeding and the Ruddy proceeding, I would make the following motions.

Motion No. 1. Respondent Saunders moves to dismiss the proceeding on the ground that a copy of the charges against Respondent was not served on the Respondent, as required by Article 10, Sections 1 and following sections of the Constitution and By-Laws of the Guild.

Motion No. 1-A. The respondent moves to dismiss the charges on the grounds of vagueness and uncertainty in the charges, depriving respondent of due process, specifically that the alleged violation of Section 1 of the Strike Rules refers to rules which are so vague and indefinite that there can be no objective standard of observance of such rules or adherence to such rules.

Secondly, that the charge to the effect that Mr. Saunders crossed the Guild's picket lines during the month of April 1973 is vague and indefinite, in that there is no reference as to any specific date, no reference to the nature of the services rendered by the respondent allegedly crossing the picket line, but merely the statement "For the purpose of rendering services."

For those reasons the charges are so vague and uncertain that respondent is unable to prepare an adequate defense and to present an intelligible response thereto.

Motion No. 2. The respondent moves to dismiss

on the ground that respondent is a non-current member of the Writers Guild and has not been given an opportunity in his capacity as a non-current member to vote upon the strike rules or to vote upon the strike, and, therefore, it is being sought by this proceeding to subject respondent to discipline for violations of rules and procedures on which he had no opportunity to vote and on which he had no say in the adoption or promulgation, therefore resulting in a denial of due process.

Motion No. 3. Respondent Saunders moves to dismiss the proceeding in view of the ambiguity between the charges, as set forth in the purported charges served on Mr. Saunders on April 14, 1973, and the position taken by the Writers Guild in its answer filed with the National Labor Relations Board, presenting the ambiguity to which reference was made in extended discussion in the prior hearings.

Motion No. 4. Respondent moves to dismiss the proceeding on the ground that the proceedings are in violation of the Guild's own Constitution and By-Laws, in that such Constitution and By-Laws specifically requires that the charges be presented to the Committee by the Executive Director, that this is a constitutional obligation on the Executive Director which is nondelegable, and that the Executive Director is not participating in the presentation of these charges to the Committee, resulting in a violation of the Guild's own Constitution.

Motion No. 5. Respondent moves to dismiss the

proceedings on the ground that the proceedings are illegal in violation of the National Labor Relations Act, in that the proceedings by their nature seek to impose discipline upon a supervisor, and the law is that a union may not impose discipline on supervisory personnel. Therefore, the Guild has no jurisdiction over the respondent by virtue of its attempting to pursue an illegal procedure.

Motion No. 6. Respondent moves in the alternative to Motion 5 for a continuance of this hearing until a final determination by the National Labor Relations Board of the proceedings presently pending before the National Labor Relations Board, which proceedings are specifically addressed to the asserted illegality of these proceedings, in that a labor organization is attempting to impose discipline on a supervisory member or on a supervisory employee contrary to the law.

Motion No. 7. Respondent moves to dismiss these proceedings in that Respondent Saunders is a television film producer, and he is not performing services and activities with respect to which the Writers Guild as the certified exclusive bargaining representative, as a result of which the Writers Guild is attempting to assert its jurisdiction over services and activities beyond its jurisdiction.

Motion No. 8. The respondent moves to dismiss this proceeding on the ground that the proceeding violates respondent's right to due process, in that respondent cannot be afforded a fair and impartial and objective hearing before a committee consisting of members of the Writers

Guild who do not constitute representatives of the rank and file of the Guild but, on the contrary, constitute a blue ribbon panel of elite members, most of whom have held the highest executive positions in the Writers Guild itself -- past presidents of the Writers Guild or the divisions thereof -- thus precluding the possibility of an objective and impartial hearing by such an extraordinary blue ribbon panel.

Motion No. 9. The Respondent Saunders moves to dismiss these proceedings on the ground that there is a clear violation of due process, in that respondent cannot obtain a fair and impartial hearing from this Committee constituting members of the Writers Guild while the current Writers Guild strike is in progress, in that finding adverse to the position taken by the Writers Guild could have a serious detrimental effect upon the current strike.

Motion No. 10. The respondent moves to dismiss the proceeding on the ground that the Chairman of the Committee, Mr. Knopf, has taken a position in litigation pending in the Superior Court and now pending in the Court of Appeals, which is so closely associated with the contract between the Writers Guild and the Producers Guild on the so-called hyphenate dispute, that Mr. Knopf, however objective he may attempt to be, cannot possibly act impartially in a situation involving the hyphenate issue, the very subject matter of the action in which he commenced as individual plaintiff.

Finally, Motion No. 11. The Respondent Saunders moves to dismiss on the ground that due process is necessarily

violated by the attempt to hold these proceedings in the framework of the publicity and sensationalized announcements regarding these proceedings that have been publicized in the trade papers; that in the inflammatory context of this strike and the emotionalism generated by the publicity and press coverage of the strike in these hearings, a fair and impartial trial is impossible, and, in the alternative, if the dismissal motion is denied, the Respondent Saunders moves for a continuance of these hearings to a time after the strike has been resolved, so that the hearings will not be conducted in the inflammatory and prejudicial atmosphere of the existing strike.

In addition to the motions which have just been presented to the Committee as Motions 1 through 11 inclusive, Mr. Susman has an additional motion or motions to present on behalf of Mr. Saunders.

MR. MENDONSA: May we label them next in order, such as Motion 12 now?

MR. KNOPF: This would be Motion 12?

MR. SUSMAN: Yes. Motion 12 is that motion to dismiss on the ground that the charges state as follows:

> "Specifically you are charged with having crossed the Guild's picket lines at Universal City Studios during the month of April 1973 for the purpose of rendering services for Universal Television, Inc., against whom the Guild was at

such time on strike."

And the motion is based on the fact that there is no entity known as Universal Television, Inc., and, therefore, the specific assertion violates the requirement of the Constitution that the member be charged or that the charges specify the act that the Guild claims was in violation of his obligations as a member.

Since there is no such entity obviously, the assertion of a specific charge in favor of a non-existeng employer is, on its face, invalid.

Motion No. 13 is a motion to dismiss based on the fact that on January 22nd, 1973, over a month prior to the strike which began on March 6, 1973, Mr. Saunders tendered his resignation to the Writers Guild, and, although the Writers Guild refused to accept the resignation, the motion to dismiss is predicated upon the assertion that the Guild had no rights so to do; that the Guild does not have any right to require a member to remain a member who wishes to resign; and in that context, I should point out that since this issue is unique so far as I am aware with regard to the hearings that have taken place before this Committee up to this point.

I should point out that the letter of the Guild in these hearings will come into evidence, in case there is any question, but the contents of the letter from the Guild in response to Mr. Saunders' resignation states that the Board voted that the membership shall continue in the Guild at least for the period during which the negotiations are

being conducted, plus an additional six months thereafter.

It is our position that the Guild has no right to require a member to remain a member for an indefinite period of time, which conceivably on the face of this response could go on for years and years and years, and, therefore, the resignation is a valid resignation; and, since the date mentioned, Mr. Saunders has not been a member of this Guild; and, therefore, this tribunal has no jurisdiction to invoke any disciplinary proceedings against Mr. Saunders.

MR. KNOPF: I would like to announce the attendance of Mr. Alan Griffiths of the Writers Guild Executive Staff.

MR. MENDONSA: I would like to ask a question. Do we incorporate by our stipulation the arguments in support and opposition to the motions in the Albert Ruddy case?

MR. SMITH: In both the Ruddy case and the Victor case.

MR. MENDONSA: I just wanted to make that clear.

Now, with respect to the Motions 1 through 11 that were made in the Albert Ruddy case, we will stand on our arguments in opposition that were set forth in the record of the Albert Ruddy case. With respect to the new motion made in this case, 1-A, as to the vagueness and indefiniteness of the charges, Mr. Smith has stated that Section No. 1 of the Strike Rules, which reads:

> "Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken

its effectiveness is per se conduct prejudicial to the welfare of the Guild."

Mr. Smith alleges that is ague. I just wish to point out that this a customary provision in most unions in their constitution or their rules of conduct. There has been no proof to show here that that is in fact vague. There has been a decision made that it would constitute a vague order. In any event, any conduct which would have an effect on this strike has been specifically alleged down at the bottom of Page 1 of Trial Committee Exhibit 1, and that specifically sets forth what conduct is prejudicial and in violation of Section 1.

With respect to the second portion of the charge that Mr. Smith says is vague and indefinite, inasmuch as the charge alleges that Mr. Saunders crossed the picket line during the month of April 1973, let me point out that the charges were served on April 14 of 1973 in the period of two weeks, and, I would assume, that you would only count the working days in those two weeks. That is not so vague and indefinite as to deny the respondent due process of law.

In any event, I wish to point out that no request was made for any clarification of these charges up to this point of time.

With respect to the second motion, Motion No. 2, that was made, I wish to point out that Mr. Smith characterized Mr. Saunders as being a non-current member of this Guild. We intend to prove that he was not a non-current member but

was in fact an associate member of this Guild and is an associate member of this Guild. I just wish to point that out. Other than that, I will stand on the arguments made in the Ruddy case.

Now, with respect to Motion No. 12, that this request has been made to dismiss this proceeding inasmuch as there is no entity known as Universal TV, Inc., --

MR. SUSMAN: Television, Inc.

MR. MENDONSA: Universal Television, Inc. I suspect again that we are quibbling about technicalities. In fact, I am not sure of the name of the entity, but this was alleged to the best of our knowledge at the time. We are willing to correct the record if the correct name of the entity is made known to us. If it is Universal TV, Inc., then I think that should be made known to us, but in any event the evidence will show that Herman Saunders did cross a picket line at Universal Studios, a company against whom this Guild was on strike. He did so in violation of Sections 12 and 13 and in violation of the strike order, so we are willing to correct the charges. This is again the first time that we have been advised that the charges were incorrect, that there is no entity known as Universal Television, Inc.

With respect to Motion No. 13, the motion has been made that this proceeding be dismissed, inasmuch as Mr. Saunders has tendered his resignation to this Guild. We intend to introduce the letter requesting resignation, which was dated January 22, 1973, addressed to the Writers

Guild of America, attention of the Membership Committee and a courtesy copy to Ranald MacDougall, who was then the president of the Guild, and signed by Herman S. Saunders, Producer, ADAM-12, along with the reply from Michael H. Franklin, the Executive Director dated January 30th, 1973 and addressed to Mr. Herman S. Saunders. Mr. Franklin's letter, as you will note, denies the acceptance of the tender of resignation in accordance with this Guild's Constitution and By-Laws, which portion of that Constitution and By-Laws is labeled Section 8 of Article 4. You will note from Section 8,Article 4 that that request or that denial of request of resignation cannot be denied for a period in excess of two years.

It is not uncommon for a labor organization to deny requests for resignations when in fact a strike looks imminent or in fact when the strike is in progress.

So, on the basis of those arguments made in this hearing and those made in the David Victor hearing and the Albert Ruddy hearing, we will urge that all motions made be denied.

MR. SUSMAN: I would like to add, if I may, a Motion No. 14.

MR. KNOPF: May we have a question.

MR. BLANKFORT: I would like to ask Mr. Mendonsa on this point. I wasn't clear. Where does that Constitution stand in relation to the resignation of a member?

MR. MENDONSA: Let me read it. It is Article 4, Section 8, appearing on Page 10 and 11 of the Constitution.

It states:

"Only members who are in good standing and are not indebted to this Guild may tender their resignation from the Guild. No member's resignation shall be effective unless the tender of resignation is in writing signed by the member and is accepted by the Board of Directors. The Board of Directors may on a tender of resignation refuse to accept it and require the member either to continue his membership for a designated period, not to exceed two years, or to be expelled in bad standing. If, on the latter decision being made by the Board of Directors, the member chooses to remain in the Guild, his rights and privileges shall not be impaired by his tender of resignation."

MR. BLANKFORT: Thank you. Mr. Susman?

MR. SUSMAN: Yes. I would like to add a Motion No. 14 to dismiss on the ground that Article 4, Section 8 is, on its face, invalid and unenforceable. It is our position that this Guild has no power or authority, and it is a deprivation of the rights of Mr. Saunders to require that he remain a member of this Guild for a period of two years if he desires to resign.

MR. KNOPF: Would you repeat that very last sentence,

please.

(The reporter read back the above-mentioned motion.)

MR. KNOPF: Thank you.

MR. MENDONSA: This is a legal question. No legal authority has been presented to this Committee that this is in fact an invalid and unendorsable provision of the Constitution and By-Laws. It is my legal opinion that it is not unendorsable or invalid. I do not believe, however, this Trial Committee should decide the legalities of the provision.

MR. LAVERY: As to No. 12, I would like to make an obvious motion in line with the suggestions of our resident counsel that the minor defect, if any be corrected on the run, as it were. This is hardly a crucial matter, and I am sure that in many courts of competent jurisdiction similar amendments are made all the time, so I move that that minor defect of form be corrected right here at the first opportunity.

MR. KNOPF: So ordered.

MR. LAVERY: Now, as to Motion 13 and Motion 14, I suggest that the Committee go into executive session for a few minutes.

MR. KNOPF: May we see the Constitution involving that one particular clause also?

MR. MENDONSA: It is Article 4, Section 8.

(A discussion was held off the record.)

MR. KNOPF: We will return to session. Mr. Lavery

will respond to 13 and 14.

MR. SUSMAN: Before that, I think I should bring something to your attention. I should bring two things to your attention. In today's Wall Street Journal at Page 10 is a report of a Supreme Court decision in a case involving the International Association of Machinists at Boeing Company's plant at Michoud, M-i-c-h-o-u-d, Louisiana, and among other things the Court decided as the following statement in the Journal, meaning that the Supreme Court held that the Machinists Union acted illegally in fining employees who had resigned from the union before returning to work during the strike.

So apparently, as nearly as we can tell from this article, the Supreme Court has rendered a decision which is entirely consistent with the argument I made. There is one prior case in the United States Supreme Court decided on December 7th, 1973, and that is the National Labor Relations Board versus Granite State Joint Board Textile Workers of America, 1029, which is reported in 69 L.C. Paragraph 13199. The comment I have on that in my notes is that if a member resigns from a union for crossing its picket line, he may not be fined even if he resigns from the union after the commencement of the strike.

In our case Mr. Saunders resigned over a month before the commencement of the strike, so it is an even stronger situation.

MR. MENDONSA: We have a comment to that. I have not read the latest court decision. Do you have a court citation

for that?

MR. SUSMAN: It's in the Wall Street Journal.

MR. LAVERY: I have it. I will bring it tomorrow.

MR. MENDONSA: I will point out that in the prior case, the December 7th case, the Supreme Court did make such a ruling. However, it also noted in its decision that there was no provision in the union's constitution and by-laws which prevented resignation in its membership.

MR. SUSMAN: It is also pointed out that only provisions which were reasonable with regard to resignation would be upheld by the court, and it is my position, as I have expressed here, that a two-year enforced membership provision is patently on its face illegal.

MR. MENDONSA: Well, I understand this is a position. It is not the law. This Committee should not be deciding law which has not been decided before.

MR. LAVERY: Mr. Chairman, a footnote in advance of an interim report of this Committee. Individually I am familiar with the first case cited. As a mater of fact, it is covered in some detail in the December issue of the American Bar Journal in an opinion written by Justice Douglas.

Now, as to the particular business before the meeting, the Committee has considered motions with respect to 13 and 14, and it is our feeling that we should take 13 and 14 under further advisement and meanwhile proceed with the rest of the business on the agenda, taking 13 and 14 under advisement for further study.

MR. KNOPF: Does that meet with your approval, Mr.

Susman?

MR. SUSMAN: Okay.

MR. KNOPF: I will proceed with the introduction of Trial Committee exhibits.

I have a copy of the charges and a cover letter sent by certified mail to respondent on April 14, 1973, with a signed return receipt attached. I mark these as Trial Committee's Exhibit No. 1. Is there any objection to the receipt in evidence of Trial Committee Exhibit No. 1?

MR. SMITH: No objection.

MR. KNOPF: It will be received.

I have marked as Trial Committee's Exhibit No. 2 a two-page letter requesting a continuance of the hearing dated April 23rd, 1973 addressed to John Mendonsa, Esq., Writers Guild of America and signed by David Miller for Loeb 7 Loeb.

I have marked as Trial Committee's Exhibit No. 3 a one-page letter requesting a continuance of the hearing dated April 25, 1973 addressed to John Mendonsa and signed by David Miller.

I have also marked as Trial Committee's Exhibit No. 4 a two-page letter granting a continuance to May 22, 1973, dated April 27, 1973 addressed to David Miller and signed by John Mendonsa, Resident Counsel.

Is there any objection to the receipt in evidence of Trial Committee's Exhibit 2, 3, and 4?

MR. SMITH: No objection.

MR. KNOPF: They will be received. As for opening

statements, do parties with to make opening statements?

MR. SUSMAN: Before you finish the list of exhibits, Mr. Chairman, I take it it is being stipulated in this proceeding that the Constitution and By-Laws and the Strike Rules are deemed exhibits by reference in the proceeding; is that correct?

MR. KNOPF: I believe they were accepted at the beginning, were they not? Am I mistaken?

MR. SUSMAN: I think the record is a little unclear as to whether it was carried over to this proceeding.

MR. MENDONSA: We will stipulate that they may be incorporated.

MR. KNOPF: Do you wish them marked?

MR. MENDONSA: No. I think that they are more in the nature of a statute of the rules in which this Guild operates. It is not necessary, I think, that they be established as an exhibit. But those are rules and regulations which this Committee has to decide as to whether or not they have been violated.

MR. KNOPF: Mr. Mendonsa, do you have an opening statement?

MR. MENDONSA: Yes. Very briefly, we intend to show that Herman Saunders did work for Universal City Studios or an affiliate of that company in violation of the Strike Rules, in violation of the Strike Orders. We intend to show that he crossed that picket line at Universal in violation of Strike Rules 12 and 13, and that his conduct was in violation of Rule 1 of the Strike Rules.

MR. KNOPF: For the respondent, Mr. Smith?

MR. SMITH: In view of the extended arguments made in support of the extended motions, I will defer further opening statement at this time. Mr. Mendonsa, do you wish to present your case?

MR. MENDONSA: Yes. I will call S. S. Schweitzer, please.

S. S. SCHWEITZER,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q. Mr. Schweitzer, will you please state and spell your name for the record.

A. S. S. S-c-h-w-e-i-t-z-e-r.

Q. Are you a member of the Writers Guild of America, Inc.?

A. I am.

Q. And approximately how long have you been a member of the Guild?

A. Since 1961.

Q. And were you a member of an affiliate organization before that?

A. I was a member of Writers Guild of America, East, prior to that.

Q. Now, you of course are aware that the Guild has been on strike since March 6th of 1973, are you not?

A. I am.

Q. Now, since that time, have you acted as Chairman of what is known as the Strike Investigatory Committee?

A. I have.

Q. And approximately how long have you acted in that capacity?

A. I guess since its formation, which would have been during the last week in March.

Q. Could you give us a brief description of your duties in that position?

A. Well, the committee processes reported infringements of the Strike Rules or the Strike Orders, and we investigate them, and if we find that there is sufficient cause for further action, we pass them along to the Disciplinary Committee.

Q. And during the course of your duties, do you on occasion make contact with any persons who come to your attention?

A. Yes. We sometimes make contact by phone or in person or sometimes just to clarify a case.

Q. Let me direct your attention to April of 1973.

On that occasion, did the name of Herman Saunders come to your attention as a possible violation of one of the Guild's Strike Rules or Strike Orders?

A. It did.

Q. Can you tell us how that came to your attention?

A. Well, apparently there had been an article in one of the trade papers which mentioned his name, and I was

asked to check on [illegible] which I did.

Q. You say you checked on it.

What did you do to check on it?

A. I called Universal Studios and asked for Herman Saunders.

Q. And did you talk with Mr. Saunders at that time?

A. I talked with Mr. Saunders at that time.

Q. Did he identify himself as Mr. Saunders?

A. Yes, but I have known Mr. Saunders for about 10 years.

Q. And you then recognized his voice?

A. I recognized his voice. He recognized my voice.

Q. And the number you called was that of Universal City Studios, Inc.?

A. 985-4321.

Q. Now, will you tell us what you said to Mr. Saunders and what he said to you in that telephone conversation?

A. Well, I told him I was calling to clarify, that I had been asked to call to clarify what was in the trades. I did affirm that he was indeed going in. He said that he had been made executive producer, and he felt that he had an obligation to go in. I might have argued that I didn't feel that he should.

He affirmed to me that he wasn't writing and that he didn't intend to hire writers, and he did make mention of the fact that he had never made much money as a writer anyway.

Q. Did he tell you in that telephone conversation on what project he was working?

A. He said that Webb had made him executive producer. I don't remember that he mentioned the project. I might have assumed it was ADAM-12, but I don't remember whether he mentioned it.

Q. Did the trade paper that you made reference to refer to what projects he was working on, do you recall?

A. I don't recall.

Q. Do you recall which company or what company he was working for at that time?

A. I assumed it was Mark 7, which is the Webb company.

Q. You are referring to Jack Webb?

A. Jack Webb.

Q. Well, you said that you assumed.

Is that something that you assumed, or is that some knowledge you gained from the trade papers?

A. Well, I don't remember the trade papers. He did mention the fact that it was Webb who made him an executive producer, so I figured he was still working for Webb.

Q. Did you advise him of the possible consequences of crossing the line or working for a struck company?

A. Yes, I did.

Q. And can you tell us what it is that you told him?

A. Well, I told him that I hoped what I had seen in the papers was not true, and I also advised him that, having talked to him and having verified the fact that he was in, I was going to have to report this and that there would

probably be some kind of disciplinary action.

Q. Did he have any response to that?

A. Well, he took it in good nature.

MR. MENDOSA: I have no further questions.

MR. KNOPF: Mr. Smith?

EXAMINATION

BY MR. SMITH:

Q. Mr. Schweitzer, how were you able to specify April 11 as the date on which you made the call to Mr. Saunders?

A. Well, as soon as I had finished talking to Mr. Saunders, I made notes of my conversation and of the date and time that I had made that.

Q. Did the notes contain reference to the conversation you had with him in addition to just the date?

A. It had a precis of my conversation with him.

Q. Did you consult your notes before coming here to testify today?

A. I consulted my notes as to the time, because I have written up a lot of those notes in my position on the Investigating Committee.

MR. SMITH: That is all.

EXAMINATION

BY MR. SUSMAN:

Q. Do you have those notes with you?

A. The notes are part of -- Mr. Mendonsa has any

notes.

MR. SUSMAN: May we see them?

MR. MENDONSA: I have no objection.

MR. KNOPF: Could we hear them?

MR. MENDONSA: Well, as a matter of legal opinion, any memorandum that the witness may have referred to in conjunction with his testimony would be available to the respondent attorney for purposes of cross-examination. They are not to be offered into evidence, unless the respondent should wish to offer them in evidence.

MR. SUSMAN: No further questions.

MR. SMITH: No further questions.

MR. POE: I would like to see the notes.

MR. SUSMAN: I have no objection to putting them into evidence if you would like to.

MR. MENDONSA: Well, I have no objection at this time. This, however, I will consider part of the work product, and I will not be offering this into evidence as a precedent that I would offer these in future cases because this is, as far as I am concerned, a privileged document and would not be available to the Committee at any other time. However, I have no objections to the Committee seeing them.

MR. POE: I withdraw the question. I would rather ask Mr. Schweitzer a question.

Did Mr. Saunders make any reference to his intent to resign from the Guild?

THE WITNESS: No, sir.

MR. POE: That is all.

MR. SUSMAN: Was the answer "No"?

MR. POE: The answer was "No."

MR. KNOPF: Any further questions? If not, Mr. Schweitzer, we thank you very much for your attendance. It is generally the policy to ask the witnesses to leave once they have testified. Thank you very much.

(The witness left the conference room.)

MR. MENDONSA: I will call as our next witness Margaret Armen.

MARGARET ARMEN,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q. Mrs. Armen, will you please state your name for the record and spell it, please.

A. Margaret Armen, A-r-m-e-n.

Q. And are you presently a member of the Writers Guild of America, West, Inc.?

A. Yes, I am.

Q. And approximately how long have you been a member of this guild?

A. I have been a member, a voting member, since 1960 and an associate since 1958.

Q. And you are aware of the fact that the Guild is now on strike against certain companies in this industry?

A. Yes, I am.

Q. And has been on strike since March of 1973?

A. Yes, I am.

Q. And during this current strike, have you served as a picket captain?

A. Yes.

Q. And where have you served as picket captain? Any one particular location?

A. Yes. At the beginning of the strike I was the picket captain with a co-picket captain at Universal Studios from March 6th through the last part of April.

Q. Last part of April.

Are you referring to the last week or since the 15th of April?

A. Well, roughly the 20th of April I was transferred to Burbank Studios.

Q. Will you give us a brief description of your duties and your functions as a picket captain at Universal?

A. At Universal the duties of the picket captain were coordinating duties. It was our responsibility to see that all shifts were on time and at the gates and the pickets were posted at each gate, at least two pickets, and that they had picket signs in evidence and that picket signs were collected at the end of the day and that there was no violation of legality as far as going on Universal's private property. That sort of thing.

(A brief recess was held.)

Q. BY MR. MENDONSA: Now, with respect to making sure that the gates at Universal were being picketed, what

was it that you did specifically?

A. We posted at least two pickets at each gate. We gave them instructions to walk back and forth and keep their picket signs in evidence. We checked the pickets on a half-hour schedule. Either our shift leaders -- we appointed shift leaders for each of the shifts of the day. Either myself as the picket captain checked each gate on a half-hour schedule, or my shift leader did it if I was unable to do it, so that we were sure the gates were covered at all times.

Q. And the shift leader then would report directly to you, if there was any lack of pickets or there was a gate or something that was not being picketed?

A. Yes.

Q. Now, can you tell us over what period of time there were pickets at Universal while you were a picket captain?

A. I consulted my desk calendar for that period just before I came, and it shows that there were pickets posted from 6:00 A.M. until 6:00 P.M. through the first week in April. After that, we went on a 9:00 A.M. schedule, and I didn't make the 6:00 A.M. notations on my desk calendar, so I must assume that in the second week of April, we went on the 9:00 to 6:00 schedule. I know it may not be accurate.

Q. Now, was there any time while you were at Universal as a picket captain that there were not pickets there?

A. Not while I was there as a picket captain. There

were just two picket captains and four shift leaders, and we checked constantly. Now, during the first three weeks there was a steady downpour of rain, as you will all recall, and our instructions to our pickets when it got too bad was that they were to seek shelter until the downpour eased and then return to their posts. Now, shelter usually meant the eaves of a fence or one of the cars.

During that downpour I was on duty all day long every day, all through April, and that only one period for forty-five minutes on the second day of picketing were the gates unmanned, and the downpour was so bad that day that we called off picketing at around 10:30. At 11:15, Bob Collins, my co-picket captain, and I were waiting out the rain at his house, and it eased off, and Bob and I decided to return to Universal and at least cover the main gate.

We found our pickets already reassembled in covering the various gates, all of them.

Q. Now, when you were picketing at Universal, were you always picketing at all gates?

A. Yes.

Q. With the exceptions of the second day?

A. Yes, yes.

MR. MENDONSA: I have no further questions.

MR. SUSMAN: I have a question.

EXAMINATION

BY MR. SUSMAN:

Q. If I understand you rightly, after April 7th

the hours for picketing were 9:00 A.M. to 6:00 P.M. at Universal; is that correct?

A. Yes.

Q. And I assume that you yourself did not see Herman Saunders cross into the studios through the picket line or come out of the studio through a picket line on April 11th or any other date?

A. I don't know Mr. Saunders.

MR. SUSMAN: Well, I would also like to move and to suggest to the Committee that in view of the new information that we now have with regard to the picketing hours, that Mrs. Armen's testimony be deemed incorporated in as part of the record, insofar as the hours are concerned, with respect to the David Victor hearing, because I think the state of the record there is such as to indicate that the picket time was 6:00 A.M. to 6:00 P.M. on the date in question, which was April 14th, in that case. I think we should correct the record.

MR. KNOPF: Are you stating that on April 14th the picket program was 6:00 A.M. to 6:00 P.M.? You would like that stipulated?

MR. SUSMAN: That is the state of the record in David Victor, but now we have factual testimony which indicates that during that period of 9:00 A.M. to 6:00 P.M., I think we should have an accurate record.

MR. KNOPF: I can only tell you my own private knowledge, which was that there were times of which mass demonstrations were effected at Universal. I don't know which days they

days they were, so I can't really accept that as a stipulation, because there were times when pickets were there from 7:30 in the morning.

MR. SUSMAN: After April 7th?

MR. KNOPF: It is Mrs. Armen's testimony that it wasn't, so I understand.

THE WITNESS: I believe that my testimony -- it should be in your notes -- my testimony was that my desk calendar -- I consulted my desk calendar, and my notations for 6:00 A.M. schedules ended on the 7th. There could have been 6:00 A.M. schedules after that, but I made the notations on my desk calendar when I was covering the 6:00 A.M. to 6:00 P.M. picketing.

Q BY MR. SUSMAN: After that, it began at 9:00 A.M., according to your desk calendar?

A. It could have begun at 9:00. It could have begun at 6:00. I can't be honest and tell you that my memory is that accurate. I must have had it on my deck calendar. It is possible that our scheduling went on until Bob Collins took over for me, because we both became quite tired, and we rotated.

MR. SUSMAN: Well, with the clarification of the witness's testimony, I withdraw the motion with regard to David Victor.

I have no further questions of Mrs. Armen.

MR. SMITH: No questions.

MR. MENDONSA: I have no questions.

MR. KNOPF: Miss Armen, we thank you very much.

(The witness left the conference room.)

MR. MENDONSA: We will call as our next witness Alan Griffiths.

ALAN GRIFFITHS,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q. Will you please state and spell your name for the record.

A. My name is Alan Griffiths.

Q. And you spell your first name how?

A. A-l-a-n.

Q. And your last name?

A. G-r-i-f-f-i-t-h-s.

Q. And, Mr. Griffiths, you are presently employed by the Writers Guild of America, West, Inc.; is that correct?

A. Yes.

Q. And what is your capacity with the Guild?

A. Assistant Executive Director.

Q. And approximately how long have you held that position?

A. Since September the 1st, 1972.

Q. And does that also mark the commencement of your employment with the Guild?

A. Yes.

Q. Now, Mr. Griffiths, with respect to this current

strike, is it possible for a member of this Guild to obtain a pass to enter a struck premises?

A. At the present time, yes. Yes, it is possible.

Q. Was that possible on April 11th, 1973?

A. Yes, it was possible.

Q. If one were to obtain or request such a pass, how would he go about that?

A. By ringing up my office and stating his case.

Q. Could he also have done that by writing to you?

A. By writing, yes.

Q. Well, are the passes then issued through your office?

A. Yes.

Q. Do you keep records of all the passes that are so issued?

A. Yes. In nearly every case we keep an actual photographic copy of the pass issued.

Q. Have you at my instructions checked your records to see if such a pass was issued to Herman Saunders at any time during the strike?

A. I have checked.

Q. And will you tell us what your findings are?

A. We have no record of a pass being issued to Herman Saunders.

MR. MENDONSA: I have no further questions.

MR. SUSMAN: No questions.

MR. SMITH: No questions.

MR. KNOPF: Thank you, Mr. Griffiths.

MR. MENDONSA: At this time, we would like to offer into evidence as Guild's Exhibit No. 1 the work record and dues record for Mr. Herman Saunders since his acceptance of membership into the Guild. May the record reflect that counsel for the Guild has shown a copy of the work record to Respondent's counsel.

MR. KNOPF: I assume if that is admitted, you have copies of it?

MR. MENDONSA: Yes.

MR. SUSMAN: Are you marking the exhibits formally?

MR. KNOPF: I don't believe anyone has officially asked that it be.

MR. MENDONSA: Well, I asked that it be marked as Guild's Exhibit No. 1, but I will ask if we can stipulate that this is a record kept in the normal course of business of the Guild.

MR. SMITH: So stipulated.

MR. MENDONSA: On that basis, I will offer it as Guild's Exhibit No. 1.

MR. SMITH: No objection.

MR. KNOPF: Proceed.

MR. SMITH: Mr. Mendonsa, can we stipulate on the record that which I believe to be the fact, namely, that this Guild has no record of any writing credit for Mr. Saunders? Is that so stipulated?

MR. MENDONSA: That will be so stipulated.

MR. SUSMAN: May I have a copy of that, please?

MR. MENDONSA: Yes. I would also like to offer into evidence as Guild's Exhibit No. 2 a one-page letter dated January 2, 1973, addressed to the Writers Guild of America, West, Inc., to the attention of the Membership Committee with a courtesy copy to Ranald MacDougall signed by Herman Saunders, Producer, ADAM-12. This is the letter requesting resignation which has been referred to in the motions. I will offer this as Guild Exhibit No. 2. I do not have extra copies of this, but I assume that you have copies.

MR. SMITH: No objection.

MR. MENDONSA: I will offer as Guild's Exhibit No. 3 a copy of a one-page letter dated January 30, 1973 addressed to Mr. Herman Saunders signed by Michael H. Franklin. This is the letter which has been referred to earlier in the record as the response to Guild's Exhibit No. 2, and I will offer it into evidence at this time.

MR. SMITH: No objection.

MR. MENDONSA: With that the Guild will rest.

MR. SMITH: Mr. Chairman and Members of the Committee, with the Guild having now rested, I would move to dismiss this proceeding on the merits of the case presented by the Guild itself. Here, gentlemen, I would respectfully submit that we have reached the most extreme possible situation that could be presented to this committee for discipline by the Writers Guild. We have a producer who, in accordance with his letter which has been offered into evidence by the Guild itself, functioned solely as a producer for five years, who for the last four years as a producer has attempted to

submit his resignation from this Guild. I mention that because in a previous hearing one of the members of the Committee raised the point for such relevance as he thought it might have whether a given respondent considers himself a writer or considers himself a member of the Guild. In this hearing, we don't have to speculate on that. We have evidence in the Guild's case that this individual doesn't consider himself a writer and has attempted to resign from the Guild.

We also have a situation where this Guild has no record of any writing credit for this particular producer. This again differs from previous cases, which at least had the scantiest possible instances of writing credits, so we have no writing credit. We have a producer who doesn't consider himself a writer and who has attempted to remove himself from membership in the Guild. We also have the fact that this particular individual respondent is what is called an associate member, which simply means that someone who never reached that stage of being qualified for full or current membership because of the insufficiency of credits, which is sort of the other side of the coin from a non-current member.

Basically a current member is someone who has the requisite credits. Associate member is someone trying to work his way up to that level. A non-current member is someone who has once been current, but, because he no longer writes with sufficient credits, is on his way down from that level. Well, here we have a man who was merely an associate

member, who hadn't reached the stage of having been a current member. Finally, we have the testimony of Mr. Schweitzer which states that when he called Mr. Saunders at Universal, he was told by Mr. Saunders specifically that he was an executive producer, and that he felt as executive producer he had an obligation to go in and honor his contract; that he does no writing; that he didn't intend to hire writers.

I think, gentlemen, all of the evidence in this case shows the extent to which Mr. Saunders is removed from any concept of writing or thinking of himself as a writer, and then being subject to discipline by this Committee and being subject to discipline by this Guild for performing purely production and producer facilities. I think that that is not only in excess of the jurisdiction of this Guild and of this Trial Committee, but I would submit it would be the most conceivably remote extension of any arguable jurisdiction that this Committee might profess to assert. On the record submitted by the Guild itself, I move to dismiss this proceeding on the merits.

MR. MENDONSA: May I respond?

MR. KNOPF: Surely.

MR. MENDONSA: We have a motion to dismiss because this man is not a writer. The issue being presented is whether or not this man is a member of this Guild. I submit that this Guild has the right to regulate its membership. He is an associate member of the Guild and has been since April of 1970. He paid his initiation fee, as reflected on Guild Exhibit No. 1, in the first quarter of 1970. He has continued

since that time to pay his dues when they were due. He has gained his membership apparently on a writing employment or a sale of literary material in June of 1967. Now, to be an associate member of the Guild, let me read to you the eligibility for associate membership from the Constitution and By-Laws, Article 4, Section 2.

> "Any person engaged to write literary or dramatic material for, and any author of unpublished and unproduced literary or dramatic material as to which rights are sold or licensed or granted for use in the motion picture, radio, television industries or other related industries, as such industries are presently constituted or as they may hereafter be constituted or reconstituted, shall be eligible for Associate Membership in this Guild."

Now, he has gained his membership by either selling his literary material or being employed to write literary material. He has chosen, for reasons we do not know, to maintain that membership for at least three years or over three years. He has thereby gained all of the benefits of Guild membership. He has all of the benefits, including the right to use a credit union of this Guild.

What is being urged by this motion is to dismiss him simply because he does not now do any writing. This is not the issue. The issue is that he is a member of the

Guild. He is entitled to the benefits of membership, and this Guild has a right to regulate its membership. The man has in fact violated this Guild's rules for the conduct of its members, including the Strike Orders and the Rules for Conduct of members during a strike. It has no relationship whatsoever to credit. His status as an associate member has no relationship to credit. When Mr. Smith talks about credit, I assume what he is talking about are units of credit which are required to obtain current membership. Those are not screen credits and should not be misconstrued as such. Those are credits which are obtained by employment as a writer or sale of material as a writer. It does not require that one give credit on his material.

MR. KNOPF: Mr. Smith, respecting the fact that you have a motion on the floor, I would like to ask a couple of questions of Mr. Mendonsa, because there is something in the record which demands an answer, I think.

MR. MENDONSA: Are you referring to Guild Exhibit 1?

MR. KNOPF: No. Let me ask you some questions as to the dues sheet.

MR. MENDONSA: That is Guild Exhibit 1.

MR. KNOPF: All right. Now, am I mistaken, or am I not, that an individual is allowed one employment writing situation in this town without having joined the Guild?

MR. MENDONSA: No. That is not correct. He has a right to join the Guild.

MR. KNOPF: I am saying he is not obligated to join the Guild. That is my question. May a man be employed in

this town as a writer without one time --

MR. MENDONSA: Well, it is not merely a matter of one time under the current contract or previous contract which expired on March 5, 1970, the collective bargaining contract between the Writers Guild and the Association of Motion Picture and Television Producers.

MR. KNOPF: What year is that?

MR. MENDONSA: That is in 1970.

MR. KNOPF: That is not what I am talking about. He performed the writing services in 1967.

MR. MENDONSA: Well, the provision of the '70 contract are, I believe, similar to those that were in existence in the 1963 television contract. I have no way of telling whether or not this was was in fact a result of employment.

MR. KNOPF: Well, what I really wanted --

MR. MENDONSA: Or a sale of material. If it was a sale of material, he would have no obligation to join this Guild whatsoever.

MR.KNOPF: Well, that is what I would like to know.

MR. MENDONSA: If it was a result of an employment, then under the collective bargaining agreement, if he were employed by a company which was a signatory to that collective bargaining agreement, he would have been obligated to join this Guild if his employment extended beyond a period of 30 days.

MR. KNOPF: What I want to know specifically is why did he join the Guild in 1970?

MR. MENDONSA: I have no way of knowing that. I would

be happy to ask Mr. Saunders, if he were here.

MR. KNOPF: Why did he join the Guild in 1967?

MR. MENDONSA: I have no way of knowing. I assume that he was not obligated under the Guild's security clause in its collective bargaining agreement to join the Guild, so he was not forced by the Guild to join the Guild, so he must have joined voluntarily in 1970.

MR. KNOPF: Why would he choose to join if he was not a writer?

MR. MENDONSA: I have no way of knowing.

MR. KNOPF: May I ask one more question. If he is not obligated to join with one assignment in 1967, does he have the prerogative to join later?

MR. MENDONSA: He may join later, yes.

MR. KNOPF: By virtue of the fact that he had one assignment, it is his option to do so?

MR. MENDONSA: That's correct, I believe now, under the current Constitution. Well, I'm sorry. That question came up the other day. It seemed to me that there was a limitation of two years. The writing or the sale of material had to be within a period of two years. Whether or not that ever got into the current Constitution, I do not believe it did. That was a proposal --

MR. POE: So at that time he could?

MR. MENDONSA: At that time he could have, yes.

MR. MONASTER: Mr. Mendonsa, it's pretty well established that this material was in 1967, and our Constitution then wasn't mandatory, and yet he had the

right to join if he wished, so I want to go beyond that. I want to go to this matter in which he joined the Guild as an associate paying $200. Unquestionably he became eligible probably on this one script he wrote in 1967. Since then he has paid his minimum quarterly dues, and that last date seems like 3-73.

Now, I don't know Mr. Saunders. I have heard ADAM-12, and I assume he is a producer on ADAM-12.

MR. MENDONSA: May the record reflect that there was a nod in the affirmative.

MR. MONASTER: When did ADAM-12 start?

MR. SUSMAN: It started in 1968.

MR. MONASTER: Did Mr. Saunders become the producer with the beginning of this show?

MR. SHANE: Yes, he did.

MR. MONASTER: He became a producer of this show in 1968?

MR. SUSMAN: Correct.

MR. MONASTER: And he joined the Guild in 1970, so I am as mystefied as Mr. Knopf, because usually producers -- He has no past record due on rewrite, and we do have Guild machinery which provides that if the rewrite qualifies him for a credit, they share in the residuals. So, in the absence of Mr. Saunders, I don't know how to address this, because we have already had this answer. It seems to me that he made himself as eligible because he was going to do a lot of rewriting on the show, as all producers do, and the possibility that on one or more of the scripts he may have

made changes enough to qualify him for the residuals. Is this a question anybody can answer or speculate on?

MR. SMITH: I think, gentlemen, all you have got is the record in the case as presented by the Guild, which shows that he hasn't got even any writing credits, either credits on the screen or on television.

MR. POE: Is Mr. Shane going to be a witness?

MR. SMITH: Yes.

MR. KNOPF: Mr. Smith, in that you will be speaking for Mr. Saunders; is that correct?

MR. SMITH: Well, of course, as I said in the earlier hearing, I can't answer factual questions as to which I don't have direct personal knowledge.

MR. KNOPF: Well, follow my logic for a moment. It would appear, would it not, that when Mr. Saunders joined the Guild in 1970, he was under no obligation to do so.

MR. SUSMAN: He was under no obligation?

MR. SMITH: There is no record either way.

MR. KNOPF: I have to go on the evidence, because I don't have the gentleman here to ask questions.

MR. MENDONSA: May I state that there is no evidence one way or the other if in fact he was obligated to join the Guild as a result of his employment with a particular producer. That would be reflected on his record.

MR. KNOPF: Then there is no employment record here of his that he chose to join perhaps?

MR. MENDONSA: That's correct. If it fact he were obligated to join in 1970, we would have an entry on the

record showing that he was employed within 30 days of his application or acceptance into membership.

MR. SMITH: Well, I was about to state that I think a much more fair and accurate statement is that the records maintained by the Guild as presented here today do affirmatively reflect an obligation that this does not say one way or the other that you can infer that there was or was not an affirmative indication of an obligation, but there is no conclusive evidence in either direction.

MR. MENDONSA: Well, may I please say something. The absence of the entry on the record would also be taken into consideration by this Trial Committee, and I would make the representation that, if in fact there were an employment in 1970 upon which this man would have been compelled to have joined this Guild under the union security clause and then the collective bargaining agreement, an entry would have been made on Guild Exhibit No. 1. It is not there.

MR. KNOPF: May I ask another question. What other efforts that anyone knows about has Mr. Saunders made? Has he made an effort to resign from the Guild?

MR. SMITH: Efforts in addition to the letter of resignation of January 22nd?

MR. KNOPF: Yes. In 1971, 1972, when a letter was received by the Guild.

MR. MENDONSA: To my knowledge, no.

MR. KNOPF: Nothing till --

MR. MENDONSA: Till January of 1973.

MR. SMITH: Of course, I would call to the Committee's

attention the fact that his letter of January 1973 states that he hadn't done any writing for five years, which coincidentally goes into the 1968 period when the ADAM series commenced, and I assume that we could infer that it meant all the while that he was acting as a producer of ADAM-12 he has done no writing functions.

MR. KNOPF: I think that I would like to know why he has chosen to maintain his membership all during this period and then to resign just before the strike.

MR. SUSMAN: You say "just before a strike." You must remember that it was well over a month before the strike took place, and on January 16, 1973, I don't think anybody in this industry knew whether or not a strike was going to eventuate.

MR. KNOPF: What you are saying, Mr. Susman, is that there is no connection?

MR. MENDONSA: Nor, may I say, is it correct that anybody knowledgeable in this industry could have anticipated that a strike was imminent.

MR. SUSMAN: Well, that is the benefit of hindsight, Mr. Mendonsa, but I have been in this industry, and I think I am fairly knowledgeable, and I can tell you that as far as most people in this industry were concerned, on January 17th, 1973, a strike was reasonably forseeable.

MR. MENDONSA: Well, may I say that my statement may have been just as absolute on one side as Mr. Susman was on the other.

MR. SMITH: So, Mr. Chairman, I would also urge that

there was no basis to speculate on what Mr. Saunders' motives might have been beyond the evidence before this Committee, which is his own statement in his letter that he hasn't done any writing in five years and that is why he wants to resign.

MR. KNOPF: You have got a statement of his intention in his letter. What I am suggesting to the Committee is that there is no necessity to speculate, because we do have Mr. Saunders' expression of his motive. I submit it isn't material, but since the Committee has heard it to that effect here, we have Mr. Saunders' own statement for his motive as not having written for five years.

MR. SMITH: I submit that the Committee has no evidence or basis upon which to generate that suspicion or that wonderment. Certainly the strike wasn't in progress back in January.

MR. MONASTER: But we have another statement from Mr. Saunders. Three years of loyally and dutifully paying dues to the Guild. We don't really offer that much social advantage. It is a pretty strong statement.

MR. POE: Or do we? I would like to know what benefits Mr. Saunders was taking from the Guild.

MR. MENDONSA: Well, if I may read to you the rights of the associate members from Article 4, Section 7, Subsection B.

> "Associate members -- Associate members of the Guild shall have the right to serve on committees, except negotiating committees and the nominating committees,

to attend meetings, and to receive Guild communications. Associate members will also have the right to vote on authorization for issuance or withdrawal of restraining orders, but only when the individual has a legal commitment to render writing services or sell or license literary property to a company which is a signatory to a collective bargaining agreement with the Guild and only if such commitment would be directly affected as a result of the issuance or withdrawal of a restraining order. The right of associate members to receive any other benefits of the Guild may be restricted or modified by circumstances or conditions beyond the control of the Guild such as, by way of example but not limitation, any restrictions imposed in connection with a federal credit union."

In other words, if there were some federal law that would restrict his right to use the credit union, which would be beyond the Guild's control, then obviously he would not have those rights, but as it stands, he certainly has the right to use the federal credit union that is available to members of the Guild.

MR. POE: Insurance?

MR. MENDONSA: He has the right to all the same benefits as any other member has in this Guild.

MR. SMITH: He didn't have the right to vote on the Strike Rules and on the Strike Orders, which was the point, of course, to which one of my motions was addressed, so he had no --

MR. SUSMAN: Or the Constitution, so he had no right in the promulgation of the very directives, rules, and constitutional provisions which are now attempted to be invoked against him, and whatever right he might have had prior to January 22nd, he went on the record with this Guild as wanting to resign from the Guild, stating as his reason that he had done no writing for five years.

MR. MENDONSA: It is like saying that one can break a civil law because he hasn't had a right to vote on its passing. I don't see the connection.

MR. POE: I would like to ask a question. What does it cost to process an individual assiciate member per year? What does it cost this Guild?

MR. MENDONSA: I have no idea.

MR. POE: Does anybody know?

MR. MONASTER: I think at the point that we changed the associate category to non-current and introduced this element of $10 per quarter, it was really based on the information given to us by some firm that we had in to examine the Guild and its expenses. It costs $142 a year to process a member, which included correspondence and the various benefits that he may have, and this sum was influential

and instrumental in getting the Guild, against minor opposition, to impose a minimum of $10 a quarter.

MR. LAVERY: Mr. Chairman, the hour is getting late, and to expedite parliamentary matters and going back to the last motion of Mr. Smith, which, as I remember, was an overall motion to dismiss --

MR. SMITH: At the completion of the presentation of the Writers Guild case.

MR. LAVERY: Well, wasn't that where you made the motion?

MR. SMITH: That's right.

MR. LAVERY: Well, speaking to our Committee here, I offer a motion to dismiss or deny the last motion of Mr. Smith, in the amiable hope that we can proceed quickly with such other business as is here, because beyond that we still have under consideration two major matters, namely, Motion No. 13 and Motion No. 14.

MR. KNOPF: If there is no objection from the rest of the Committee, I will deny the motion and ask that Respondent present his case, please.

MR. SUSMAN: I would like to present Mr. Mendonsa as the first witness.

JOHN A. MENDONSA,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q. Mr. Mendonsa, as far as the records of the Guild

are concerned, with which you are familiar, was Mr. Saunders a member in good standing and not indebted to the Guild at the time of the tender of his resignation from the Guild?

A. From my reading of the records, he was a member in good standing.

Q. And was not indebted at that time?

A. Let me see. The date of the letter of the tender of resignation was January 22nd, 1973. The payment for his fourth-quarter 1970 dues was made on January 16, 1973, which would indicate then that he was in fact in good standing at the time of January 30th of 1973.

Q. Am I also to understand from your Exhibit 1 that the last writing done by Mr. Saunders was under date of June 21, 1967?

A. To the Guild's knowledge, the information contained on the record is information that is supplied by the writer. Whether he has done any other writing without the Guild's knowledge, I cannot testify.

Q. You have no independent knowledge to the contrary then; is that correct?

A. That is correct.

Q. I have difficulty understanding the Constitution and By-Laws with respect to the rights and the obligations of an associate member.

Am I correct that an associate member has no right to vote?

A. Are you asking me a question?

Q. I called you as a witness, yes.

A. Well, I think the Constitution speaks for itself. I am not the interpreter of the Constitution. The Constitution is in evidence.

Q. Well, do associate members vote on such things as the Constitution and By-Laws?

A. I think the character of the By-Laws and Constitution speak for themselves.

Q. Well, you pointed out to me that the provisions that relate to that particular question.

A. I think I pointed out on the record already that it is Article 4, Section 7, Subsection B that was read into the record.

Q. It says they have certain rights. It doesn't say that they don't have other rights? That is what I am trying to get at.

A. Well, then, your interpretation of the omission is just as good as mine. I said I am not the interpreter of this Constitution, but I would assume that he would not have any other rights other than what is presented in this section, unless it is otherwise presented somewhere else in the Constitution.

Q. Now, there is one section of Section 7-B that says that associate members may vote in one particular regard on authorization for issuance or withdrawal of restraining orders, but only in effect those restraining orders affecting any particular individual.

Now, were there any such restraining orders affecting Mr. Saunders?

A. I have no idea. He would have the opportunity to submit evidence and obtain a right to vote if he came within that provision of Section 7-B.

Q. You have no knowledge that he did have anything to do with an issuance or withdrawal of a restraining order pertaining to him, do you?

A. I have no knowledge whether he voted or not.

Q. Do you have any knowledge of any of these so-called benefits that the Guild provides that were taken advantage of by Mr. Saunders?

A. I can say that Mr. Saunders was given the right to attend all meetings. He was in fact mailed all the Guild's mailings. He had the right to sit and be part of Guild committees. He had the right to participate in the Guild's credit union. He had a right to become a member of the Film Society.

Q. My question is, did he take advantage of any of those rights?

A. I have no knowledge whether or not he has or not, except for the fact that he was sent mailings.

MR. SUSMAN: Thank you. I have no further questions.

MR. KNOPF: Do you wish to cross-examine yourself?

MR. MENDONSA: No.

MR. SUSMAN: I call Mr. Arnold Shane as a witness.

ARNOLD SHANE

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q. Will you state your name for the record, please.

A. Arnold Shane.

Q. Again, would you state for the record the nature of your employment and duties?

A. I am employed as Business Affairs Executive by MCA and Universal and its various divisions.

Q. To your knowledge, is there any entity known as Universal Television, I-n-c.?

A. There is no such corporation to my knowledge.

Q. Do you know Herman Saunders?

A. Yes, I do.

Q. Do you remember duties by you in contact with him in his employment capacity at the studio?

A. Yes.

Q. What is the nature of his work?

A. He has been for the last five years the producer of the ADAM-12 series. He is currently the executive producer of the same series.

Q. Is he a member of the Producers Guild of America?

A. Yes, he is.

Q. Is he also a member of the American Federation of Musicians?

A. Yes.

Q. Has Mr. Saunders rendered any writing services to Universal in the past five years?

A. No. He has not.

Q. Now, with regard to the things that Mr. Saunders does as producer or executive producer, does he have authority in the interests of his employer to hire people?

A. Yes.

Q. To transfer them?

A. Yes.

Q. To suspend them?

A. Yes.

Q. To lay them off?

A. Yes, he does.

Q. Recall them?

A. Yes.

Q. To promote them?

A. Yes.

Q. Discharge them?

A. Yes.

Q. To assign them?

A. Yes.

Q. Reward them?

A. Yes.

Q. Or discipline them?

A. Yes, he does.

Q. Or to adjust their grievances?

A. Yes.

Q. Or to recommend such action of any of the foregoing?

A. Yes, he does.

MR. SUSMAN: No further questions.

EXAMINATION

BY MR. MENDONSA:

Q. Who was the producer or what is the company that produces ADAM-12?

A. ADAM-12 is produced by a joint venture of Mark 7 and Universal Television.

Q. And Mark 7 is a company wholly owned by Jack Webb?

A. Yes, it is. I understand it is a corporation. Mr. Webb holds all the stock, I believe.

Q. Is there an entity referred to as U.T.V.?

A. Well, that is an abbreviation for the Universal Television Division of Universal City Studios, Inc.

Q. It is a division then of Universal Studios, Inc.?

A. Universal City Studios, Inc., yes.

Q. Are you knowledgeable with respect to Mr. Saunders' personal service contract with Universal City Studios or with Mark 7 Productions?

A. Yes, I am.

Q. And with which entity is that?

A. That contract? Universal City Studios, Inc.

Q. Is that an exclusive contract or are his services exclusive to Universal City Studios?

A. Yes, they are.

Q. Does his contract provide for writing services?

A. If required by Universal.

Q. You say that he is currently and has been in the past five years the producer of ADAM-12?

A. He is currently the executive producer. He has been the producer.

Q. I see. How long has he been the executive producer?

A. Since sometime in late February, I believe.

Q. Late February of 1973?

A. Yes, or perhaps a bit earlier than that. I don't remember the exact chronology of the change, but it was the early part of this year.

Q. Would it have been prior to February 20th of 1970?

A. What year?

Q. Prior to '73, I'm sorry. Prior to February 20th of 1973. Would he have obtained his position as executive producer prior to that date?

A. I believe so, but I'm not sure of the specific day.

Q. Now, Mr. Susman asked you several questions with respect to his authority and his position.

Were you referring to his authority as executive producer?

A. Either or both.

Q. Do you mean your answer would be the same with respect to each and every one of the questions asked by Mr. Susman, whether or not he was the executive producer

or producer of the program?

A. Yes.

Q. Now, to your knowledge, you say that he has the authority to hire personnel?

A. Yes.

Q. And how was it that you have that knowledge? Do you know that he has the authority to hire?

A. Yes, I do.

Q. And how was it that you have that knowledge?

A. I am familiar with the business operation of the studio and the unit which produces the ADAM-12 show.

Q. Well, if somebody told you that he has the authority to hire, have they told you?

A. In those specific words?

Q. Well, that was the question that was asked of you.

A. No, I don't believe so.

Q. To your knowledge has he hired anybody?

A. Yes.

Q. Now, has he hired somebody without consultation with anyone else?

A. He has certainly hired many writers, possibly in consultation with the story editor. In any case, I'm sure it was his own decision.

Q. He would not have consulted with Mr. Webb or anyone else from Mark 7 or Universal City Studios?

A. Over the last two or three years, Mr. Webb has not been that closely involved in the day-to-day production

of ADAM-12. Mr. Saunders has worked more with the writers and the general personnel hired for the individual shows than Mr. Webb has. And with respect to Universal Television that is also true. There is a production executive who oversees the show, but the general functions of hiring people for the programs is generally left to the producer or the executive producer of the show.

Q. They have the final authority to hire?

A. The final authority?

Q. Yes.

A. In many, many cases, yes.

Q. Can you give us an example of a time Mr. Saunders hired somebody on his own without consultation or without having to get approval of anybody else?

A. I can't give you any specific names of people, but I do know that he hired many writers to do scripts for the series. He has hired directors also.

Q. When has he done that?

A. Over the past five years.

Q. What was the last time?

A. In December or January.

Q. Of 1972?

A. December of 1972 and January 1973.

Q. And can you tell us who he hired at that time?

MR. KNOPF: Excuse me. There is a desperate situation here.

(A brief recess was held.)

MR. KNOPF: Returning to session. Mr. Mendonsa?

MR. MENDONSA: Yes. May we have the last question and answer, please.

(The reporter read the record.)

Q. BY MR. MENDONSA: Can you tell us who he hired at that time?

A. Writers.

Q. Do you know who specifically?

A. No.

Q. How was it that you know he hired the writers?

A. Because copies of deal memos that are made covering the employment of writers come across my desk, and copies of the scripts that are written come across my desk following the making of the deals.

Q. But you don't know who these people are?

A. No. I have no present recollection of their names. I have not gone back to examine the names that came through.

Q. Well, from the deal memo, how was it that you know that Mr. Saunders hired these people?

A. Because I know at that time Mr. Saunders was the producer of ADAM-12 and was hiring writers.

Q. But then you were not present at the time he actually hired them?

A. No, I was not.

Q. So you don't know whether he did it on his own accord or if he did consult with anybody else?

A. I only know as a matter of general conduct that it occurs in both circumstances -- on his own or in

consultation with the rest of the staff.

Q. But you do not know then of your own personal knowledge that Mr. Saunders actually hired writers in either December of 1972 or January of 1973?

A. No, but I know he has the authority to do so.

Q. How was it then that you just testified a little while ago, if I am not mistaken, that no one told you that he had that authority?

A. This is the general function of a producer and executive producer under the way that Universal does its business at the studio.

Q. So you assume that he would fall into a category which, I suspect, that you have some other knowledge?

A. I'm afraid I don't understand that question.

Q. Maybe that was an unintelligible question.

You are assuming that Mr. Saunders falls into a category of persons who have that authority; am I correct?

A. Yes, you are.

Q. And I assume then that you have some knowledge that this other category of persons actually has the authority or has been given the authority to hire in the interests of the company?

A. Well, Mr. Mendonsa, you referred to this other category. I'm not sure what you mean by "other category."

Q. Well, the category that you referred to in the industry that has the authority to hire.

A. Yes. I am referring to producers and executive producers.

Q. Now, you are saying to us that you have personal knowledge that there are people that fall in that category, that have this authority?

A. Yes.

Q. How was it then that you know that these people have the authority?

A. Because when we employ a person as a producer or an executive producer, we give them that authority.

Q. Who is "we"?

A. The executives of the company.

Q. Would that include yourself?

A. Yes.

Q. Did you hire producers?

A. Yes.

Q. And did you tell them right off at the time that they were hired that they have the authority to hire?

A. I can't recall specifically that he has the authority.

Q. You say he has the authority to transfer.

What do you mean by that?

A. It means that if there is a particular person who is already employed by the studio whom he wishes to have involved in his particular show, that he can transfer that person to his show if he first determines that he is not otherwise tied up in another show.

Q. But would this be something he would have to consult with somebody else to do?

A. Yes.

Q. So he wouldn't have the right to transfer somebody on his own accord without consulting with somebody else?

A. He probably would not have the sole authority, I would say.

Q. With respect to suspension, you say that he has the right to suspend.

Can you tell us what you mean by that?

A. It means if a person is for some reason not fulfilling the duties for which he was employed, whether it be by reason of illness or default, that perhaps force majeure Mr. Saunders will take the steps to have that person suspended from his duties.

Q. When you say "take the steps," what do you mean by that?

A. He will commence a procedure to have any legal notices sent out that have to be sent, if that is required. He would contact the production executives of the studio that oversee his show and perhaps tell them that such a person is not doing his job and must be suspended, and the steps should be taken through the legal department, or in some cases he would contact the legal department himself.

Q. Do you know of any instance where Mr. Saunders has suspended somebody?

A. I can't think of any specific instance, but he does have that authority.

Q. How is it that you know that he has that authority?

A. Again, this is within the general authority that we give our producers and executive producers.

Q. And again it is your assumption that this falls within that general category?

A. Yes.

Q. To your knowledge, has he ever promoted anybody?

A. He was one of a few people who jointly promoted a man to producer of the ADAM-12 show.

Q. He is one of several people that had a part in that decision?

A. Yes.

Q. Would he have the authority to promote that person without consulting anybody else?

A. It depends upon what the particular function is.

Q. Well, would he have the authority to promote anybody without consulting with somebody else?

A. Yes, I believe so.

Q. You believe so.

Is that a fact of your own knowledge?

A. This is a general function that we allow within certain limits of what level of function it is.

Q. Again you are assuming that he falls within those general categories which you testified would have such authority?

A. Yes.

Q. It is not something that you have of your own personal knowledge that he was actually given that authority?

A. Not by any specific directive that I know of.

Q. Are you aware of any instance where Mr. Saunders discharged somebody?

A. No specific instance, but I know of many situations where a writer was terminated at story level.

Q. By Mr. Saunders?

A. Yes.

Q. Was this a right of option?

A. What do you mean by "option"?

Q. Well, was it a part of the writer's contract at the end of the story that he would have the right to pick up an option for him to go on?

A. Yes.

Q. And that is simply an exercise of the right of that contractual option?

A. In the case of the writers, yes, it is.

Q. And would he make that decision by himself?

A. Very often he would, yes.

Q. Can you give us an example of the time when he actually exercised that option without consulting with anybody else?

A. No. I don't know of any specific instances, but he does have ADAM-12.

Q. Again, you assume that he has the authority by reason of the fact that he falls within that category of persons that have that authority, to your general knowledge?

A. Yes.

Q. And would that be true then of any other things that were asked of you by Mr. Susman as to his right to

assign, his right to reward, his right to discipline, his right to adjust grievances?

A. Yes.

Q. But you don't really have any specific knowledge that he was given the authority within the interests of the company to perform these functions?

A. Not by -- none of any specific directive giving him the authority.

Q. Nor do you have direct knowledge that he was given the authority to effectively recommend such action?

A. I have been in meetings where he was involved in recommending such action. Mr. Sheinberg has been present in such meetings, and he was involved in following out Mr. Saunders' recommendations.

MR. LAVERY: Mr. Chairman, I don't mean to shut off any counsel at this hearing, but we have been here since 1:00 o'clock this afternoon. I think that we ought to take strict steps to expedite this and get out of here by a quarter to 8:00. Enough is enough.

MR. MENDONSA: My time should not be any more than five more minutes with this witness. However, an issue has been raised by respondent. Again I think it is an attempt to try a case that is being tried before the National Labor Relations Board. I do not believe that is the proper form for it, but we will not admit that this man is a supervisor within the meaning of the National Labor Relations Board.

MR. LAVERY: Gee, does it take that long?

MR. MENDONSA: I'm sorry. It is a very complicated area

of law, and this may very well be what is going to take a very long time, about the National Labor Relations Board hearings. I do not believe this is the proper place to raise it.

MR. LAVERY: With this record?

MR. MENDONSA: That may be established in the record. I have no way of knowing why it is raised, but we will not admit this man is a supervisor within the meaning of the National Labor Relations Act.

MR. KNOPF: Is there any way that there can be an inclusive question?

MR. MENDONSA: Yes. It will take about five more minutes.

Q Now, you say that you have been present at meetings in which he has made a recommendation for such action.

Now, will you be specific as to what action Mr. Saunders recommended?

A. The appointment of Tom Williams as producer of ADAM-12.

Q But this is the situation in which you told us that there were other people involved in that decision, right?

A. Yes.

Q So he did not make the sole recommendation as to that appointment, right?

A. The sole recommendation?

Q Well, was he the only one making the recommendation?

A. No.

Q. There were others who made the recommendation that he be promoted to producer?

A. Yes.

MR. MENDONSA: I have no further questions.

MR. SMITH: No questions.

MR. KNOPF: Thank you. Thank you for your patience.

MR. KNOPF: I will ask if the respondent rests their case.

MR. MENDONSA: The Guild rested.

MR. SMITH: Yes, the respondent now rests, and at the completion of the entire case do have a rebuttal.

MR. KNOPF: Mr. Mendonsa?

MR. MENDONSA: No, we have no rebuttal.

MR. KNOPF: Mr. Mendonsa, do you wish to make a closing argument?

MR. MENDONSA: Well, I think the case has been made clear. We are simply alleging that this man has violated the strike order and the strike rules as set forth in the charges, which is Trial Committee's Exhibit 1. We have established that he by telephone admitted that he was working at Universal. The testimony is clear he was working at Universal. The testimony may be that he was not working at Universal Television, Inc., but it appears that he was working for Universal City Studios, a struck company, in association with Mark 7 Productions, a struck company, possibly within the division of Universal TV or U.T.V., which is a division of Universal City Studios.

In the interests of getting finished, I think that we will just let the record stand as it is.

MR. SMITH: First, I would like to renew at the end of the entire case all the motions which were made both by myself and Mr. Susman at the inception of this proceeding. I ask that the Committee consider the motions in the light of the evidence that has now come in in both the Guild's case and in the defense. I would simply remind the Committee that here we have a situation of a non-writing producer. All of the evidence in this record in both the Guild's case and the defense is that this gentleman, as producer of ADAM-12, did no writing. We have a respondent who has no writing credit on file with the Guild. We have a respondent who attempted to resign from this membership in the Guild. We have as remote an association with writing as, I submit, could possibly be managed. We have someone who has done everything within his power to disassociate himself from membership in this Guild.

I submit to the Committee that to attempt to assert jurisdiction and to impose discipline on this producer for functioning as a producer would not only be unlawful but violative of every concept of due process, every concept that would be the most extreme and extraordinary extension of Guild's purported jurisdiction. There is no basis for the imposition of discipline.

For this reason and all the arguments heretofore stated, I submit that the proceeding should be dismissed as to this respondent.

MR. BLANKFORT: Help me to agree. Do you acknowledge that Mr. Saunders is a member of the Writers Guild?

MR. SMITH: I acknowledge that the respondent has attempted to resign his associate membership in the Guild.

MR. BLANKFORT: Let me put it this way. Would you acknowledge that he was a member of the Writers Guild before his offer of resignation?

MR. SMITH: He was an associate member before his offer of resignation. As far as everything he has attempted to do, as far as he had concerned himself with doing, he wouldn't be a member of the Guild today.

MR. BLANKFORT: All right. The second question I am going to ask you for, please, would be not necessarily by our view, but by the Constitution of the Guild. Do you acknowledge, because it didn't fit into the requirements of the Constitution -- would he now be a member of the Writers Guild? I mean, by the Writers Guild's own definition of procedure on resignation, which obviously he has failed to act on. Would you now consider him to be a member of the Writers Guild?

MR. SMITH: Well, we consider the Guild's attempts to deny his efforts to resign in view of his failure to have done any writing for five years or to have done any writing whatsoever to be a totally inappropriate imposition of asserted Guild's jurisdiction over this person. One of the motions that is now pending, as renewed before you, is Mr. Susman's motion that the denial of the attempted resignation is a violation of due process, so I don't concede that under

any standards of law Mr. Saunders should be a member of this Guild at this time.

MR. KNOPF: In response to Mr. Smith's motions to dismiss, 1 through 12, on behalf of the Committee, unless I hear otherwise, are denied. 13 and 14 are being taken under advisement. Any further statements? I will read one statement into the record, please, if I may, just for the record.

> "This matter will be taken under submission by this Trial Committee. After this Committee has deliberated, it will submit its written recommendation as to guilt or innocence along with its recommendation for disciplinary action, if any, to the Board of Directors, who under the Guild's Constitution and By-Laws have the authority to either accept, reject, or modify this Committee's recommendation. In order for this Committee to make a recommendation of guilt, it will require a vote of no less than four members. If more than one member votes for acquittal, it will be the recommendation of this Committee that the respondent be acquited of the charges."

If there be nothing further, this hearing is adjourned.

(Trial Committee's Exhibits 1,2,3,4 and Respondent's Exhibit 1 are here by admitted in evidence.)

(The hearing was adjourned.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, PETER M. RUNKLE, a Notary Public of the State of California, certify:

That the foregoing Transcript of Proceedings was taken before me at the time and place therein set forth and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing 12 pages represents a true, correct and full transcript of those proceedings had before me.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal this 7th day of June, 1973.

Peter M. Runkle
Notary Public of the State of California

OFFICIAL SEAL
PETER M. RUNKLE
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Apr. 26, 1977

Guild Ex. #2

mark vii ltd

mark vii ltd. 100 Universal City Plaza Universal City Calif. 91608

January 22, 1973

Writers Guild of America, West
8955 Beverly Boulevard
Los Angeles, California 90048

Attention: Membership Committee

Gentlemen:

In light of the fact that I have done no writing for credit in nearly five years and have functioned solely as a producer in that period, I therefore, respectfully request that you accept my resignation from the Writers Guild of America, West, as of this date.

Sincerely,

Herman S. Saunders

Herman S. Saunders
Producer, ADAM-12

HSS:rd

cc: Ranald MacDougall

Guild's Exhibit 2
P.M.R., N.P.

RECEIVED
JAN 23 1973
W. G. A. W.